



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

Community Legal Services (of Arizona), Inc.
Case Service Report/Case Management System Review
January 28-31, 2013

Recipient No. 703030

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that CLS' 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: CLS' intake procedures and case management system generally support CLS' compliance related requirements. However, exceptions were noted with respect to documenting over-income factors and exempt assets, as well as screening for income prospects.

Finding 3: Sampled cases evidenced that CLS substantially complies with the income eligibility 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"). There were a limited number of cases reviewed that lacked the eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3. Additionally, CLS' revised income eligibility policy is compliant with CFR Part 1611.

Finding 4: Sampled cases evidenced that CLS substantially complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. There were a limited number of cases that did not contain the documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. CLS' revised asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

Finding 5: CLS is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were several case files reviewed that did not contain citizenship attestations and/or verifications of alien eligibility. CLS' revised policy is in compliance with 45 CFR Part 1626.

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

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). CLS' revised policy is compliant with 45 CFR Part 1636.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). CLS' revised policy on priorities is compliant with 45 CFR Part 1620.

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

Finding 10: Sampled cases evidenced non-compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

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

Finding 13: Review of CLS' policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, three (3) Managing Attorneys, and the one (1) attorney who has engaged in the outside practice of law during the review period, revealed that CLS is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). CLS' revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

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). Additionally, CLS' revised policy on fee generating cases is in compliance with 45 CFR Part 1609.

Finding 16: Review of CLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff demonstrated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

Finding 17: CLS is substantially compliant with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of PAI cases. Additionally, CLS is substantially compliant 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.

Finding 18: CLS is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization. CLS' revised policy on subgrants is also in compliance with 45 CFR Part 1627.

Finding 19: CLS is in substantial 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 evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). CLS' revised policy is in compliance with the requirements of 45 CFR Part 1612. A videotape available in a

CLS branch office contains content that appears inconsistent with the requirements of 45 CFR § 1612.7(a)(2).

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). CLS' revised policy on redistricting is in compliance with the requirements of 45 CFR Part 1632.

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

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). CLS' revised policy on solicitation is compliant with 45 CFR Part 1638.

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

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: CLS is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) slight revision was recommended.

Finding 32: CLS' Accounting Manual and Program Policies and Procedures relating to fiscal operations require updating to reflect current significant fiscal processes and controls

needed to meet the requirements of LSC Grant Assurances, LSC Regulations, and the Accounting Guide for LSC Recipients (2010 Ed.).

Finding 33: A limited review of CLS' internal control policies and procedures demonstrated that the policies and procedures compare favorably to Chapter 3, The Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System, of LSC's Accounting Guide for LSC Recipients (2010 Ed.) and LSC Program Letter 10-2.

Finding 34: Review of CLS' credit card payments reviewed for the months of June 2011 and 2012 disclosed that the majority of payments were appropriately reviewed, and approved. However, there were four (4) charges lacking supporting documentation at the time the charges were initially reviewed.

II. BACKGROUND OF REVIEW

During the week of January 28-31, 2013, staff of the Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) Review at Community Legal Services (of Arizona), Inc. (“CLS”). 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 LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of five (5) attorneys, one (1) fiscal analyst, and two (2) temporary employees.

The onsite review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that CLS has correctly implemented the 2008 CSR Handbook, as amended 2011. Specifically, the review team assessed CLS 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 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)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of CLS’ upper and middle management, staff attorneys, and support staff. CLS’ case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2010 through November 30, 2012. Case file review relied upon randomly selected files as well as targeted and pulled 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 onsite review, the OCE team selected 755 cases to review onsite, which included 83 targeted files. All of the selected cases were reviewed.

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.

CLS currently provides legal services to eligible clients in several counties in Arizona including La Paz, Maricopa, Mohave, Yavapai, and Yuma. CLS provides client services at six (6) offices located in the cities of Phoenix, Mesa, Prescott, Yuma, San Luis, and Kingman. CLS also has a satellite office located in Lake Havasu that is not staffed, but serves as a conference center for clients who cannot travel to any of the other offices. CLS' central office is located in Phoenix, Arizona.

CLS' Basic Field Grant in 2012 was \$3,669,339.00; in 2011, it was \$4,463,530.00; in 2010, it was \$4,655,999.00; and in 2013, it is expected to be \$3,687,562.00. In its 2012 submission to LSC, CLS reported 4,713 closed cases. In its 2011 submission to LSC, CLS reported 5,751 closed cases. In its 2010 submission, the program reported 6,489 closed cases. CLS' 2010 self-inspection certification revealed a 4.5% error rate in CSR reporting. CLS' 2011 self-inspection certification revealed a 6.2% error rate in CSR reporting. CLS' 2012 self-inspection certification revealed a 3.5% error rate in CSR reporting.

By letter dated November 20, 2012, OCE requested that CLS provide a list of all cases reported to LSC in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed in 2011 (closed 2011 cases), a list of all cases closed between January 1, 2012 and November 30, 2012 (closed 2012 cases), and a list of all cases which remained open as of November 30, 2012 (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 CLS staff and the other for cases handled through CLS' PAI component. CLS 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). CLS 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, an effort was made to create a representative sample of cases that the team would review during the onsite visit. The sample was developed proportionately among 2010, 2011, 2012 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 CLS agreement of January 3, 2013, CLS 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.³

³ 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.

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

At the conclusion of the visit, on January 31, 2013, OCE conducted an exit conference during which CLS was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted substantial compliance in the areas of 45 CFR Part 1611 (Financial eligibility policies); 45 CFR § 1611.9 (Retainer Agreements) and CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided). Non-compliance was noted in the areas of 45 CFR § 1626.6 (Verification of citizenship) and CSR Handbook (2008 Ed., as amended 2011), Chapters VIII and IX (Case closure categories).

By letter dated April 26, 2013, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. CLS was asked to review the DR and provide written comments. On May 22, 2013 and June 5, 2013, CLS requested, and received, an extension of the due date for their response to the DR. Pursuant to the extension, CLS agreed to submit its response to the DR on June 21, 2013. By electronic mail dated June 21, 2013, CLS submitted its comments to the DR. OCE has carefully considered CLS' comments and has either accepted and incorporated them within the body of the report, or responded accordingly. CLS' comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: Sampled cases evidenced that CLS' 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 an automated case management system (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.

Based on a comparison of the information yielded by the PIKA system, which is CLS' ACMS, to information contained in the case files sampled, CLS' PIKA system is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were seven (7) CLS files reviewed where PIKA indicated dormancy, but the physical case file indicated timely closure. However, upon review and discussions with the case review intermediary, this appeared to be an inputting discrepancy, as opposed to a PIKA issue. Specifically, it was disclosed that the responsible advocate did not input the case closure dates into PIKA because they were under the impression that the cases may be re-opened at the client's request. It was relayed to the case review intermediary, by the case reviewer, that cases should

be closed in PIKA once all legal assistance has ceased, and that the advocate has the ability to re-open the case at a later date, should the need arise.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 2: CLS' intake procedures and case management system generally support CLS' compliance related requirements. However, exceptions were noted with respect to documenting over-income factors and exempt assets, as well as screening for income prospects.

General Intake Overview

CLS' administrative office is in Phoenix, Arizona and it has five (5) branch offices throughout the State of Arizona. According to CLS' Organizational Chart, each branch office or local office is comprised of a Managing Attorney, at least one (1) staff attorney, and various support staff such as a paralegal, secretary, and/or intake receptionist. With the exception of screening for reasonable intake prospects, as required by 45 CFR § 1611.7(a)(1), and documenting over-income factors and exempt assets, interviews with staff primarily responsible for intake screening and onsite demonstrations of intake screening practices at all CLS branch offices revealed generally consistent, compliant screening procedures.

Onsite interviews with CLS staff revealed that its intake screening system is both program-wide and localized. The program-wide component is the Telephone Access Project ("TAP") which operates from CLS' main office. Intake screening for TAP is conducted by telephone Monday through Friday from 9:00 a.m. to 2:00 p.m., with walk-in applicants screened Monday through Friday from 9:00 a.m. to 5:00 p.m. If an applicant is deemed eligible, then the applicant's intake information is transmitted to the appropriate branch office based on the applicant's residency. TAP does not preclude a branch office from conducting its own intake screening, as all CLS intake staff indicated that walk-in applicants and telephone applicants can also be screened locally.

The intake procedures of CLS' offices were assessed by interviewing support staff, Managing Attorneys, and by onsite demonstrations of the PIKA system. The interviews and evaluation of PIKA revealed that intake screening procedures performed by the majority of intake staff generally support CLS' compliance related requirements with respect to obtaining written citizenship attestations, performing conflict and duplicate checks at the start of the intake screening, and considering authorized exceptions and factors when screening an applicant for income eligibility. However, as previously stated, intake screeners do not screen for reasonable intake prospects, as required by 45 CFR § 1611.7(a)(1), and not all screeners properly document over-income factors and exempt assets.

Review of the TAP Program-wide Intake Screening

General overview of intake screening process, case acceptance and oversight procedures

TAP Unit intake screeners, referred to as liaisons, conduct program-wide intake screening in person and via the telephone. The TAP Unit manager indicated that the Unit is composed of five (5) liaisons who are all bilingual in English and Spanish. The manager further indicated that the TAP Unit receives approximately 75 calls a day.

Walk-in applicants are initially screened for priorities by the receptionist or a TAP liaison. For telephone applicants, the receptionist or TAP liaison determines case type eligibility and then routes the call to a TAP liaison to conduct an intake screening; no information is inputted into PIKA at this time. For walk-in applicants, if the applicant's legal matter is within CLS' priorities, the receptionist or TAP liaison will provide them with an Application for Assistance, which is TAP's manual intake form. The application is in English and Spanish. Tap liaisons interviewed indicated that responses from the application are reviewed by a TAP liaison on a daily basis, and the liaison enters the responses directly into PIKA once the application has been fully reviewed for eligibility.

Interviews with the TAP Unit manager and two (2) TAP liaisons indicated that intake screening is a bifurcated process where the first step is a pre-screening that consists of screening for financial eligibility, verifying citizenship/alien eligibility, and obtaining household composition information. The verification of citizenship/alien eligibility requires the applicant to execute a citizenship attestation, if they are a citizen of the United States, or provide proof of alien eligibility to be reviewed by the intake worker. If the applicant appears eligible based on their provided responses, then the second step of a full intake screening begins. However, if the applicant is over-income or their legal status in the United States cannot be verified, then the applicant is rejected and, according to those interviewed, provided referrals to alternative legal service providers.

Case Management Review

The TAP Unit manger indicated that, for both walk-in and telephone applicants, once she reviews and confirms the intake information by reviewing all responses with the applicant to ensure accuracy, the case is then assigned to a CLS unit (*e.g.*, Housing, Benefits, etc.) and/or a branch office. A case may be rejected for legal assistance after any of the following have occurred: pre-screening, full intake screening, and/or the case has been transferred to the individual unit or branch office. According to the TAP Unit manager, if the case is rejected by the TAP Unit, a letter is sent to the applicant explaining the basis for denial. If the rejection occurs after the case has been transferred, then the applicant is notified of the rejection by the branch office and/or by TAP by letter or telephone call. If the applicant is eligible for services, the applicant is notified of potential case acceptance and an appointment is made for the applicant to meet with a CLS advocate. At the weekly case acceptance meeting, the advocate determines whether to accept the case for brief services, extensive service, or reject the case. Once the case has been completed, the responsible advocate assigns the closing code and the case is reviewed for compliance at the end of the year by the advocate's Managing Attorney.

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 after the pre-screening, at the start of the full intake screening. As explained above, the pre-screening is an abbreviated intake screening consisting of verifying income/asset eligibility and citizenship. If there appears to be a possible conflict or duplicate, the case notes section of PIKA will include a notation indicating “May be Conflict.” The actual conflict is confirmed by the branch office and/or a Managing Attorney. In cases where a conflict is present, the case is not accepted for services.

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

The onsite observation of PIKA during the demonstration of the system did not reveal any defaults in PIKA.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Onsite demonstrations with all but one (1) intake staff interviewed indicated an understanding that an applicant will be considered eligible for LSC funded legal assistance if the applicant’s income is under 125% of the Federal Poverty Guidelines (“FPG”). If the applicant’s income is over 125% of the FPG, but below 200% of the FPG, the interview and the onsite observation, through a test applicant of the PIKA system, indicated that a “spend-down,” which consists of applying permissible deductions to the applicant’s income, is correctly inputted into PIKA by intake staff. The permissible deductions, pursuant to 45 CFR § 1611.5(a)(4), include, but are not limited to: rent/mortgage, vehicle payment, child care, child support, spousal maintenance, employment expenses (*i.e.* uniforms, dues), payroll taxes, and medical expenses. If deductions are applied, the onsite demonstrations evidenced that PIKA deducts the applicable amounts and calculates the resulting total.

The DR recommended that CLS modify the TAP Unit’s manual intake form and PIKA as to the medical expenses category so that it more accurately reflects 45 CFR § 1611.5(a)(4)(ii). The factor relating to medical expenses only authorizes unreimbursed medical expenses and medical insurance premiums as over-income exceptions. However, the application allows for “Medical Expenses/Gastos Medicos” to be considered as factors.

In its response to the DR, CLS asserted that both the manual intake form and CLS’ PIKA have been changed to reflect that only unreimbursed medical expenses shall be considered as applicable factors. CLS also attached copies of the revised TAP intake form and its PIKA menu of factors, which list “unreimbursed medical expenses” as applicable factors.

In addition, onsite interviews with intake staff indicated that one (1) intake staff member believes that the income threshold for victims of domestic violence is 250% of the FPG. This appeared to arise from CLS previously having a non-LSC funding source that allowed for a victim of domestic violence to be provided with legal assistance as long as the victim's income was less than 250% of the FPG. Intake interviews indicated that this staff member would apply a spend-down using the earlier referenced permissible deductions in these types of cases. However, case review did not reveal any instances where the client was financially ineligible under LSC criteria and service was provided using LSC funds and/or reported to LSC for CSR purposes.

In its response to the DR, CLS pointed out that it has a "non-LSC-funding source (CPIP) that allows victims of domestic violence to be provided with legal assistance as long as the victim's income is less than 250% of the FPG. Those applicants/clients whose gross income is between 200-250% of poverty are given a grant code of "V" and those cases are not reported to LSC."

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

While the intake staff articulated the asset ceiling limits and was familiar with the categories of assets excluded by CLS, the manual intake form listed certain assets that do not meet the criteria for assets, as defined in 45 CFR § 1611.2(d). As defined in 45 CFR § 1611.2(d), assets are "cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant.

On page 4 of the TAP manual intake form, applicants are asked:

"Do you have any of the following assets/Recurros:

Do you own your home?

yes no

Do you own any other real estate?

Yes no

Do you have a checking account?

yes no Balance \$_____

Do you have a savings account?

Yes no Balance \$_____

How many vehicles does you (*sic*) household own?

Do you own other assets, such as stocks, bonds, CD's?

Value \$_____"

Stocks, bonds, and CD's may not be considered assets, as defined by 45 CFR § 1611.2(d), because not all stocks, bonds, and CD's are readily convertible to cash and currently and actually available to the applicant.

The DR recommended that CLS revise its manual intake form so that it accurately reflects assets that meet the definition contained in 45 CFR § 1611.2(d). In so doing, the form should indicate how to determine whether an asset meets the definition contained in 45 CFR § 1611.2(d), by prescribing methods to determine actual availability (*i.e.*, ascertaining and documenting any barriers to liquidation of an applicant's stocks, bonds and/or CD's). The DR also recommended that, to the extent that any revisions are made to the intake form, CLS should ensure that CLS staff is provided training on the revisions, with special attention directed to intake screeners in all offices, and that the CLS financial eligibility policy is consistent with the revisions.

In its response to the DR, CLS indicated that it has revised its manual intake form and financial eligibility policy to meet the requirements of 45 CFR § 1611.2(d). The response also included a copy of CLS' revised intake application, which authorizes the inclusion of stocks and bonds to the extent that they are actually and readily available to the applicant. The response further indicated that intake screeners are now provided with instructions regarding how to determine asset eligibility. CLS also stated that it plans to provide training to all staff regarding CLS' newly revised financial eligibility policy and intake forms during a conference scheduled to take place August 22-23, 2013.

4. 45 CFR § 1611.7(a) (1) Reasonable Income Prospects Screening:

The onsite observations indicated that CLS is not in compliance with 45 CFR § 1611.7(a)(1), as neither the onsite intake screening demonstrations nor the manual intake form included a reasonable income prospect inquiry. CLS should revise its intake form to include reasonable income prospect screening. In addition, the DR recommended that CLS ensure that staff is provided training on how to apply 45 CFR § 1611.7(a)(1) during the intake screening process. Under 45 CFR § 1611.7(a)(1), and in accordance with LSC's OLA Advisory Opinion # AO-2009-1006, LSC recipients are required make a reasonable inquiry into prospective income, and shall record and document this information. As such, and as explained above, the DR recommended that CLS should add a prospective income field in its PIKA program so intake staff is sure to inquire about it and document it.

In its response to the DR, CLS stated that its manual intake form has been revised to include a question regarding the applicant's prospective income, and has instructed intake staff on how to properly query and ascertain an applicant's income prospects. A copy of the revised intake form, which was included in the response, now includes a question regarding an applicant's prospective income, and CLS' PIKA has been modified to include a prospective income field. CLS further stated that more training will be provided to all CLS staff regarding reasonable income prospects screening at the conference scheduled to take place in August 2013.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Those interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The manual intake form and alien eligibility verification generated by PIKA indicate that an applicant's United States citizenship status attestation is in a format compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5.

Telephone applicants: Those interviewed from the TAP Unit explained that telephone applicants are asked to verbally confirm United States citizenship status, or indicate that the applicant satisfies one of the following allowable categories:

Legal permanent resident;
Refugee;
Replacement Agricultural Worker (RAW);
Seasonal Agricultural Workers (SAW);
H2A; or
Kennedy Amendment.

The onsite demonstration indicated that this type of screening is conducted during the pre-screen.

Walk-in applicants: Interviews with TAP liaisons and the TAP Unit manager indicated that whenever staff has in-person contact with an applicant, either a signed written attestation confirming United States citizenship status is obtained or documentation of alien eligibility is obtained. When the applicant is an eligible alien, the TAP Unit Manager and TAP liaisons interviewed indicated that copies of the documentation establishing legal status are made and reviewed, and the applicant's alien registration number, which is assigned by the Department of Homeland Security, is copied and placed into the applicant's case file.

6. Program Letter 06-2, Violence Against Women Act ("VAWA") 2006:

Intake staff were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

7. Outreach:

The outreach activities of the central office are conducted by the office's PAI component and will be addressed in Finding 17 *infra*.

Review of Localized Intake Screening for the East Valley Office

General overview of intake screening process, case acceptance and oversight procedures

The East Valley office is composed of two (2) attorneys (one (1) staff attorney and one (1) Managing Attorney), two (2) paralegals, and one (1) receptionist. This office accepts family law cases and cases involving tenants' rights. In-person and telephone intake screening is conducted Monday through Thursday from 9:00 a.m. to 5:00 p.m.; the office is closed to the public on Friday. However, telephone intake screening is conducted on Friday from 9:00 a.m. to 5:00 p.m. Interviews indicated that intake screening is conducted by the receptionist.

As noted in the TAP intake screening practice, East Valley utilizes a bifurcated process composed of a pre-screening and a full intake screening for telephone applicants. Walk-in applicants are provided a manual intake form to complete if the receptionist is unavailable. The East Valley intake form is generally the same as the Application for Assistance used in the TAP Unit with one (1) difference, which will be discussed in detail in the Financial Eligibility Screening portion of this section. All new intake applications are placed into the Managing Attorney's inbox for review. The Managing Attorney indicated that intake applications are reviewed daily and are either accepted or rejected on the day of review. If a case is accepted, it is assigned to a staff member based on legal matter (*i.e.*, family law, tenants' rights, etc.). If an applicant's matter is rejected for legal services, a written notification of the rejection is sent to the applicant.

Case Management Review

As noted above, the Managing Attorney reviews intake applications daily and makes the determination of whether to accept or reject a case. If a case is accepted, it is assigned to a staff member based on the legal subject, such as family law, tenants' rights, etc. If an applicant's case is rejected for legal services, a written notification of the rejection is sent to the applicant. Once the case has been completed, the responsible advocate assigns the closing code and the case is reviewed for compliance at the end of the year by the Managing Attorney.

As a result of certain compliance errors noted during the course of case review, which are discussed below, the Managing Attorney indicated that, moving forward, cases will be reviewed on a more consistent basis for timeliness, dormancy, and sufficiency of legal advice noted in the file.

Specific areas of compliance evaluated in regards to intake screening protocol

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

The manner for determining duplicates and conflicts is consistent with the manner explained in the TAP section of this report, with the Managing Attorney verifying all conflicts. If the conflict is verified, the applicant is advised that CLS cannot provide

legal assistance in his/her matter and directed to contact the Lawyer Referral Service of the Maricopa County Bar Association.

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

The onsite observation of the demonstration of the system did not reveal any defaults in the ACMS.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Interviews with intake staff indicated an understanding that an applicant will be considered eligible for LSC funded legal assistance if the applicant's income is under 125% of the FPG. If the applicant's income is over 125% of the FPG, but below 200% of the FPG, the interview and the onsite observation, through a test applicant of the PIKA system, indicated that a "spend-down," which consists of applying permissible deductions to the applicant's income, is correctly inputted into PIKA by intake staff. The permissible deductions, pursuant to 45 CFR § 1611.5(a)(4), include, but are not limited to rent/mortgage, vehicle payment, child care, child support, spousal maintenance, employment expenses (*i.e.*, uniforms, dues), payroll taxes, and medical expenses. If deductions are applied, the onsite demonstrations evidenced that PIKA deducts the applicable amounts and calculates the resulting total. PIKA maintains evidence of the applicant's original income prior to the spend-down being conducted.

As previously noted, the East Valley office, at times, utilizes an application for intake screening. This application is similar, but not an exact duplicate of the manual intake form used in the Phoenix office. A review of the East Valley application revealed that applicants are asked the following in the Income/Assets Information section:

Do You Pay For Any Extraordinary Fixed Monthly Expenses? Please indicate below:

Monthly payment for back income taxes;
Monthly payment for medical bills;
Monthly Employment expenses (dues, uniform, etc.);
Child care;
Child support; and
Spousal Maintenance.

45 CFR § 1611.5(a)(4) makes no distinction between extraordinary expense and ordinary expense. Furthermore, this distinction is not defined in the application or used in any other CLS office. As explained by the Executive Director during the review, CLS does not wish to place additional income restrictions on applicants that do not exist in LSC regulations, and would like for CLS' policy to match the current requirements of 45 CFR Part 1611. Therefore, the DR recommended that CLS should either:

- Delete this reference on its application; or
- Provide an explanation in CLS' policy referencing all applicable regulations (*i.e.*, 45 CFR Part 1611), including clarification as to why any additional restrictions are permissible.

In addition, the East Valley manual intake form includes a deduction for monthly payment for medical bills. It is recommended that CLS modify this application as to the medical expenses category so that it more accurately reflects 45 CFR § 1611.5(a)(4)(ii). The factor relating to medical expenses only authorizes unreimbursed medical expenses and medical insurance premiums as over-income exceptions. However, the application allows for "Medical Expenses/Gastos Medicos" to be considered as factors.

Finally, the East Valley intake form includes deductions for "monthly payment for back income taxes." This category is not included in any other CLS branch office intake application. Moreover, the East Valley intake application does not include the following expenses as applicable deductions, even though these same expenses are included in other branch office applications:

Mortgage;
Rent;
Vehicle Payment; and
Payroll Taxes.

For consistency in intake screening procedures, in the DR, OCE strongly recommended that CLS adopt one intake application for program-wide use.

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

Intake staff interviewed expressed an understanding of CLS' asset ceiling limits and was familiar with the categories of assets that could be excluded by CLS. In addition, the excludable assets are listed in PIKA.

4. 45 CFR § 1611.7(a)(1) Reasonable Income Prospects Screening:

The onsite observation indicated that reasonable income prospects screening is not conducted and the question is not a part of CLS' PIKA system or noted on East Valley's manual intake form.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The screening procedures performed to achieve compliance with 45 CFR Part 1626 in the East Valley office are consistent with the requirements of 45 CFR Part 1626. The manual intake form and alien eligibility verification generated by PIKA indicate that an applicant's United States citizenship status attestation is in a format compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Intake staff

reported that citizenship status is verified during intake screening and, when necessary, documentation of eligible alien status is requested and reviewed before completing the intake process. Intake staff also indicated that copies of the requested documentation are made for the file.

6. Program Letter 06-2, Violence Against Women Act (“VAWA”) 2006:

Intake staff interviewed were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien. Occasionally, a “Kennedy Amendment Eligibility Form” is utilized, which states that, although the applicant is not eligible under the citizenship rules of CLS, the applicant meets the circumstances described in 45 CFR § 1626.4. This form requires the signature of a CLS advocate and is not utilized by the TAP Unit.

7. Outreach:

According to the Managing Attorney, this office does not conduct outreach activities where legal advice is provided to participants or attendees.

Review of Localized Intake Screening for the Yavapai Office

General overview of intake screening process, case acceptance and oversight procedures

The Yavapai office is open Monday through Friday from 8:00 a.m. to 5:00 p.m. Intake screening is conducted Monday, Wednesday, and Thursday from 9:00 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m. However, intake staff indicated that these hours are very flexible; as long as someone is available, intake staff will conduct an intake screening. Interviews indicated that intake screening is conducted primarily by the intake receptionist. Intake staff interviewed at the Yavapai office indicated that there is a preference towards electronic records. Therefore, applicants are rarely provided with a manual intake application form.

The manual intake form provided during the course of review is a document that was developed by the intake receptionist and is not a form that is used in other CLS branch offices. In order to ensure uniform screening procedures in compliance related areas, in the DR, OCE strongly encouraged CLS to use the same intake application in all of its branch offices.

The intake screening process, as discussed *supra*, consists of a two-step process consisting of a pre-screening and a full intake screening; if the pre-screening reveals no exceptions, then a full intake is conducted. As previously stated, the pre-screening consists of verifying applicant eligibility (*i.e.*, financial eligibility and citizenship/alien eligibility status). All applicants who go through the two-part process are then placed on a list for case acceptance and assignment. The intake receptionist indicated that, on a case-by-case basis, she either forwards the case directly to a staff attorney, depending on the applicant’s case type, or leaves the determination of case assignment up to the Managing Attorney to decide. The intake receptionist does not make the

decision of whether to accept or reject a case. The case acceptance decision is made, often on the same day as the intake screening, by the staff attorney or the Managing Attorney.

Case Management Review

The Managing Attorney reviews intake applications daily and makes the determination of whether to accept or reject a case. Additionally, as noted above, the intake receptionist may send a case directly to a CLS advocate for the advocate to determine case acceptance, depending on the case's legal subject matter. If a case is accepted, by either a CLS advocate or the Managing Attorney, the client is notified of case acceptance and the case is assigned to a staff member based on legal matter (*i.e.*, family law, tenants' rights, etc.). If an applicant's case is rejected for legal services, a written notification of the rejection is sent to the applicant. Once the case has been completed, the responsible advocate assigns the closing code and the case is reviewed for compliance by the Managing Attorney at the end of the year. The Managing Attorney also indicated the case review is conducted once a month, with staff meetings held weekly. She indicated that staff must review their cases every 30 days in order to prevent dormancy or untimely closing issues.

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 interviewed indicated that conflicts and duplicates that are flagged in a conflict/duplicate check performed in PIKA are resolved during the intake screening process. However, if there appears to be any doubt during the screening process as to whether a case maybe a conflict, the issue is forwarded to the Managing Attorney for instruction.

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

Consistent with onsite observations in the Phoenix and East Valley offices, during the demonstration at the Yavapai office, the PIKA system did not contain any defaults.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Intake staff interviews indicated an understanding that an applicant will be considered eligible for LSC funded legal assistance if the applicant's income is under 125% of the FPG. If the applicant's income is over 125% of the FPG, but below 200% of the FPG, the interview and the onsite observation, through a test application of the PIKA system, indicated that a "spend-down," which consists of applying permissible deductions to the applicant's income, is correctly inputted into PIKA by intake staff. The permissible deductions, pursuant to 45 CFR § 1611.5(a)(4), include, but are not limited to rent, childcare, medical expense and car payments. If deductions are

applied, the onsite demonstrations evidenced that PIKA deducts the applicable amounts and calculates the resulting total.

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

Intake staff articulated the asset ceiling limits and were familiar with the categories of assets that could be excluded by CLS. In addition, the excludable assets are also listed in PIKA.

The Yavapai's intake application identifies investments as assets; however, pursuant to 45 CFR § 1611.2(d), investments such as stocks, bonds, etc. may not be considered assets, as defined by 45 CFR § 1611.2(d), because not all stocks, bonds, and CD's are readily convertible to cash and currently and actually available to the applicant. CLS should revise its manual intake form so that it accurately reflects assets that meet the definition contained in 45 CFR § 1611.2(d). In the DR, OCE recommended that to the extent that any revisions were made to the intake form, CLS should ensure that CLS staff is provided training on the revisions, with special attention directed to intake screeners in all offices, and that the CLS financial eligibility policy is consistent with the revisions.

4. 45 CFR § 1611.7(a) (1) Reasonable Income Prospects Screening:

As seen in the Phoenix and East Valley offices, reasonable income prospects screening is not conducted and the question is not included in Yavapai's intake screening practices.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The Yavapai office uses a Declaration of Citizenship form containing a citizenship attestation format that is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Intake staff reported that citizenship status is verified during intake screening and, when necessary, documentation of eligible alien status is obtained before completing the intake process.

6. Program Letter 06-2, Violence Against Women Act ("VAWA") 2006:

Intake staff were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien. The Yavapai office uses the same "Kennedy Amendment Eligibility Form" that is utilized in the East Valley office.

7. Outreach:

The outreach activities of this office are conducted by the office's PAI component and will be addressed in Finding 17 *infra*.

Review of Localized Intake Screening for the Yuma Office

General overview of intake screening process, case acceptance and oversight procedures

Intake in CLS' Yuma Office is primarily done by an intake receptionist and two (2) other staff members who fill in for the receptionist when she is out of the office. Intake hours are Monday through Friday from 9:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 4:00 p.m.

Overall, the vast majority of the staff cases handled by CLS' Yuma office come in through the office's localized intake process, and only a very limited number are referred from other CLS offices. The Yuma office conducts both in-person and telephone intakes.

Yuma does not conduct any in-person/day-of clinic intake. Every six (6) months or so, it hosts a *Pro Bono* Clinic for clients; attendees of the clinic are clients of CLS who are screened for eligibility in advance of the clinic date by Yuma intake staff.

With one (1) exception, an assessment of CLS' PIKA fields and interviews with two (2) key intake staff evidenced that CLS has sufficient fields and eligibility screening practices to generally support LSC requirements. The one (1) exception relates to prospective income, as CLS' PIKA does not contain a field to note that intake staff has inquired about prospective income. Interviews also indicated that staff does not regularly inquire about prospective income.

When an applicant enters the office, they are greeted and asked to sign a sign-in sheet by the intake receptionist. The intake receptionist then meets with applicants in the order in which they arrive. She will conduct the intake using CLS' PIKA system in a room next to the reception desk, so as to keep the information exchanged confidential. As a first matter, the receptionist inputs the applicant's name and runs a conflict and duplicate check. If none are found, she then enters the applicant's address and contact information before continuing to the PIKA eligibility screen. During the eligibility screening, inquiry is made as to how many adults and children are in the applicant's household and other relevant questions to determine the accuracy of the answer.

The intake receptionist then inquires as to whether the applicant is a United States citizen or Permanent Legal Resident. If the applicant is a Permanent Legal Resident, she asks to see and copy their ID card. The vast majority of applicants to the Yuma office are either citizens or Permanent Legal Residents. On rare occasions, the office will screen an applicant who qualifies for eligible status due to the Seasonal Agricultural Worker ("SAW") Program. Interviews indicated that the intake receptionist is familiar with the Kennedy Amendment and other manners through which non-U.S. citizens are eligible for LSC funded services.

The intake receptionist then asks sufficient information to conduct a reasonable inquiry of the applicant's income and assets. If the applicant appears to have no income, she questions how they are able to satisfy their monetary obligations, so as to ensure she has inquired about all sources of income. As discussed above, however, the intake receptionist does not routinely inquire about or document prospective income.

Next, the intake receptionist asks applicants about certain expenses they may have such as current taxes, medical, child care, employment expenses, or other fixed expenses. She will then use the “calculate” option in PIKA, which automatically subtracts the applicant’s qualifying expenses from their monthly income. If this amount falls at or below 125%, then she will consider them to be eligible for services. The receptionist also questions the applicant about their assets. Specifically, it is asked if the applicant has any real property other than their primary residence, and whether they have any savings, checking, or other investments. Interviews indicated that the intake receptionist was familiar with CLS’ asset limits and policy.

If the intake receptionist finds the applicant is financially and otherwise eligible, she will ask for, and enter, the name and social security number (if available) of the opposing party and run another conflict check. Lastly, she will print the PIKA record and ask the applicant to sign the line that requires they certify that the information provided is accurate. She also asks the applicant to sign CLS’ Standardized Citizenship and Immigration Status Attestation and Documentation form, which contains a citizenship attestation and attestations of alien eligibility for a range of eligible applicant immigration categories (e.g., Legal Permanent Residents, H2A Workers, SAW applicants, etc.). Review of the form indicated it is consistent with LSC requirements.

If the applicant is eligible for CLS’ services, the intake receptionist will then inform the applicant that someone from the office will contact them, or will set up an appointment for the applicant to meet with an advocate. The advocate will decide at this meeting whether CLS will be able to accept the applicant’s case and provide the applicant with legal services.

Applicants who do not qualify for CLS’ services are informed that their case cannot be accepted, either by telephone or mail, and referred to the local modest means program or to local bar referral programs.

Telephone Intake Procedure

The Yuma office’s procedure for telephone intake is virtually identical to the procedure detailed above, with respect to the eligibility screening. The only difference is that the intake screening process takes place over the telephone. Telephone applicants are also asked to sign the PIKA print out to certify its accuracy and CLS’ citizenship attestation form described above when the applicant meets with the advocate who will decide whether to accept the applicant’s case.

Domestic Relations Workshop

Interviews indicated that CLS’ Yuma office holds a Domestic Relations Workshop for existing CLS clients. Workshop attendees are screened for eligibility through the regular intake process in the Yuma office. Clients who may benefit from the workshop meet with Yuma’s two (2) paralegals, who help them create the paperwork needed to initiate a divorce proceeding in court. Before these meetings, clients receive a letter describing the requirements of the workshop, along with a questionnaire to complete. Interviews also evidenced that the paralegals are conscious of their need to contact a supervising attorney for guidance on how to handle any non-standard legal issues that may arise at the workshops.

Case Management Review

At the time of the review, the Yuma office did not have a Managing Attorney, and the Director of Litigation in CLS' Phoenix Office was serving as an Acting Manager for the office. Interviews indicated that much of legal services provided in the Yuma office are provided by paralegals. Interviews also evidenced that these paralegals are sufficiently supervised by attorneys.

Intake staff do not accept eligible applicants for CLS services. This decision is made by the advocate who meets with the applicant once they are determined to be eligible for services. Although an advocate may accept an applicant's case and provide them with initial legal advice at the time of their first meeting, most potential cases are discussed, accepted/rejected, and assigned in the office's weekly Friday staff meetings. These meetings were led by the former Managing Attorney, but are now led by the Director of Litigation in Phoenix.

Interviews also indicated that the former Managing Attorney reviewed all open cases for each staff member on an annual basis. The Managing Attorney also reviewed all closed cases to ensure they were properly handled and closed before they were provided to the intake receptionist who would close the cases in PIKA. Interviews indicated that since the departure of the Managing Attorney, which was only approximately one (1) to two (2) weeks before OCE's review, staff was not yet certain as to the specific oversight procedures that the Director of Litigation would put in place until the office had a new Managing Attorney. It was indicated that, at a minimum, the Director of Litigation would review open cases for compliance issues on an annual basis, and would review all closed cases on a quarterly basis.

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 interviewed indicated that conflicts and duplicates are determined during the beginning of the intake screening process. If a conflict appears to be present, it is forwarded to the Managing Attorney for guidance. At the time of the visit, all potential conflicts were being forwarded to the Director of Litigation for review and guidance prior to case acceptance/rejection. This system will remain in place until a new Managing Attorney is appointed.

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

Onsite observations did not reveal any defaults in the PIKA system.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Intake staff interviews indicated an understanding that an applicant will be considered eligible for LSC funded legal assistance if the applicant's income is under 125% of the FPG. If the applicant's income is over 125% of the FPG, but below 200%, the interview and the onsite observation, through a test applicant of PIKA, indicated that a "spend-down," which consists of applying permissible deductions to the applicant's income, is correctly inputted into PIKA by intake staff. The permissible deductions, pursuant to 45 CFR § 1611.5(a)(4), include, but are not limited to rent/mortgage, vehicle payment, child care, child support, spousal maintenance, employment expenses (*i.e.*, uniforms, dues), payroll taxes, and medical expenses. If deductions are applied, the onsite demonstrations evidenced that PIKA deducts the applicable amounts and calculates the resulting total.

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

Intake staff articulated the asset ceiling limits and were familiar with the categories of assets that could be excluded by CLS. In addition, the excludable assets are also listed in PIKA.

4. 45 CFR § 1611.7(a)(1) Reasonable Income Prospects Screening:

Reasonable income prospects screening is not routinely conducted and the question is not a part of intake staff's intake screening practices.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The citizenship form contains a citizenship attestation format that is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Intake staff reported that citizenship status is verified during intake screening and, when necessary, documentation of eligible alien status is obtained before completing the intake process.

6. Program Letter 06-2, Violence Against Women Act ("VAWA") 2006:

Intake staff were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

7. Outreach:

According to the Director of Litigation, the office does not conduct outreach activities where legal advice is provided to participants or attendees, aside from the Divorce Relations Workshop that was discussed *supra*. As noted above, the attendees of the Divorce Relations Workshop are CLS clients whose cases have been accepted, and who have been screened for eligibility, prior to attending the workshop.

Review of Localized Intake Screening for the San Luis Office

General overview of intake screening process, case acceptance and oversight procedures

The San Luis office conducts intake during the days and hours that the office is open, which are Monday to Friday from 8:00 a.m. to 12:00 p.m., and from 1:00 p.m. to 5:30 p.m. Close to 100% of the office's clients are screened in-person and almost 100% of their clients are local farm workers. The office is home to CLS' Farmworker Project, and the vast majority of the cases the office handles relate to unpaid wages, workers compensation, income maintenance, and employment discrimination. Close to 100% of intakes are walk-in applicants, as the office is within walking distance for the majority of the target population. On occasion, the office will assist holders of H2A visas, but the majority of applicants are U.S. citizens and Permanent Legal Residents.

Notably, there are only two (2) staff members in this office. The staff member who conducts the vast majority of intake was not available to be interviewed due to a work-excused absence. As such, the staff member who serves as the primary intake back-up, the office's outreach paralegal, was interviewed. The intake process in the San Luis office is the same as the walk-in intake procedure for the Yuma office that was detailed above, with respect to the eligibility questions asked during the screening. Staff asks applicants slightly different probing questions relating to income, as the majority of San Luis's clients have seasonal income. As such, they sometimes seek to ascertain the current and prospective income to capture an accurate overall picture of the applicant's annual income.

The interview and case review indicated that staff appears to be very knowledgeable and experienced in working with its target population and ask sufficiently probing questions to accurately determine citizenship, income, and asset eligibility. However, all intake staff were not fully aware of CLS' financial eligibility policy, use of the PIKA eligibility fields, and information contained in the CSR Handbook, such as LSC closing codes.

Interviews and case review also indicated that the Farmworker Project litigates "mass action" cases. An interview with a staff attorney who handles the majority of these cases indicated that these cases differ from class actions in that they are brought under the Migrant and Seasonal Workers Protection Act and are not class actions pursuant to Rule 23 of the Federal Rules of Civil Procedure. *See* 45 CFR § 1617.2(a) (defining "class action"). Case review corroborated the information provided regarding these types of cases; namely, that no cases were initiated or converted into a class action case, as defined in 45 CFR § 1617.2(a). Mass actions also differ from class actions in that, in a mass action, each client is represented separately but under one uniformed case, as opposed to several clients with the same claim and representation.

Like the Yuma office, the San Luis office also uses CLS' Standardized Citizenship and Immigration Status Attestation and Documentation form. The office also uses a standardized Authorization for Release of Information form, as well standardized retainer and client-advocate forms.

Case Management Review

The San Luis office is very small and consists of one (1) intake receptionist and one (1) outreach paralegal, who also handles approximately 55% to 80% of the offices cases. Both the outreach paralegal and intake receptionist close cases and assign the applicable closing code. However, as noted above, the intake staff member interviewed was not familiar with LSC compliance requirements relating to income/asset eligibility, dormancy, untimely closings, and closing codes. It was relayed during the onsite review that the CLS Director of Litigation reviews all open cases with staff on an annual basis. Intake interviews indicated that if staff in the San Luis office receives the training recommended above, this level of oversight will likely be sufficient to ensure that applicants are accepted, and cases are closed, in accordance with LSC requirements.

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 interviewed indicated that conflicts and duplicates are determined during the beginning of the intake screening process. If a conflict appears to be present, it is forwarded to the Director of Litigation for guidance.

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

Onsite observations did not reveal any defaults in the PIKA system.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Intake staff interviews indicated that back-up intake staff is not very familiar with 45 CFR Part 1611 income eligibility requirements or CLS' financial eligibility policy and needs training.

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

Intake staff articulated the asset ceiling limits; however, they were not familiar with the categories of assets that could be excluded by CLS.

4. 45 CFR § 1611.7(a)(1) Reasonable Income Prospects Screening:

Reasonable income prospects screening for all applicants is not routinely conducted and the question is not routinely part of intake staff's screening practices. While intake staff will seek to ascertain the current and prospective income of an applicant who has indicated seasonal employment, the question is not regularly asked or included as part of the intake screening.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The citizenship form contains a citizenship attestation format that is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Intake staff reported that citizenship status is verified during intake screening and, when necessary, documentation of eligible alien status is obtained before completing the intake process.

6. Program Letter 06-2, Violence Against Women Act (“VAWA”) 2006:

Intake staff were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

7. Outreach:

According to the intake staff, the office does not conduct outreach activities where legal advice is provided to participants or attendees.

Review of Localized Intake Screening for the Kingman Office

General overview of intake screening process, case acceptance and oversight procedures

Intake in CLS’ Kingman office is primarily done by an intake specialist, and one (1) paralegal. Intake hours are on Mondays from 9:00 a.m. to 12:00 p.m., unless an applicant has an emergency, in which case staff will conduct an intake when the applicant comes into, or calls, the office.

Overall, as with the Yuma office, the vast majority of the staff cases handled by the Kingman Office come in through CLS’ central intake hotline and only a very limited number are referred from other CLS offices. Approximately 70% of the intake conducted in the Kingman office is by telephone; approximately 20% is in-person; and around 10% is by fax with telephone follow-up. Each of these is described in more detail below. Interviews indicated that intake staff in Kingman is very knowledgeable about CLS’ eligibility policies and LSC requirements.

Walk-in Intake

Intake staff in the Kingman office conduct walk-in intake in a manner similar to that done in the Yuma office, which is described in detail above, with minor exceptions. The intake specialist in the Kingman office uses a different citizenship attestation and immigration status verification form than the one used in Yuma, and also uses a specific form to collect the information needed for conflict checks. Also, as in Yuma, applicants review and sign the PIKA applications after the intakes are complete. Intake staff then inform the applicant that their application will be reviewed by an advocate, who will contact them about a possible appointment. Advocates meeting with or calling an applicant after the intake is complete decide whether they will accept

the applicant's case for advice and/or brief services, and/or propose at a staff meeting that the case be accepted for extended services.

Telephone Intake

Telephone intake is conducted in the same manner as walk-in intake, with the only difference being that the applicant reviews and signs the application and citizenship attestation or immigration status verification form when they come into the office for their first appointment.

Fax Intake

The Kingman office also receives manual intake applications by fax, which intake staff review before calling the applicant to conduct a full telephone intake screening, as per the procedures discussed above. A review of the fax application form indicates that it contains fields required to conduct an effective eligible screening, except that it does not contain a field for prospective income. As noted previously, it is recommended that, in addition to adding a prospective income field into the PIKA system, CLS also include such a field in all manual intake forms.

Many of these applications are faxed from organizations who offer office space for Kingman office advocates to meet with applicants within their service area. Interviews confirmed that no funds or in-kind benefits are given to these organizations for the use of this space.

Divorce Workshops

The Kingman office facilitates divorce workshops where *pro se* CLS clients meet with advocates in order to obtain assistance with completing divorce forms and/or obtain counsel and advice. The intake and case acceptance for these workshops is done in advance of the workshop and in accordance with the practices and procedures discussed above.

Case Management Review

The Managing Attorney for the Kingman office is located in Prescott, Arizona, and was not in Kingman on the day of the onsite review. She comes to Kingman for meetings every other Wednesday to discuss new and pending cases. Although advocates in the Kingman office have a degree of flexibility as to what cases they accept and reject for advice or brief service, decisions as to whether certain extensive service cases should be accepted are discussed at these meetings. The Managing Attorney also reviews all open cases with each advocate on an annual basis.

Interviews and case review indicated that the level of management and oversight of the Kingman office is sufficient to ensure cases are opened and closed in accordance with LSC compliance requirements.

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 interviewed indicated that conflicts and duplicates are determined during the beginning of the intake screening process. If a conflict appears to be present, it is forwarded to the Managing Attorney for guidance.

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

Onsite observations did not reveal any defaults in the PIKA system.

3. Financial Eligibility Screening 45 CFR Part 1611

a. 45 CFR Part 1611 Income Eligibility Screening:

Intake staff interviews indicated an understanding that an applicant will be considered eligible for LSC funded legal assistance if the applicant's income is under 125% of the FPG. If the applicant's income is over 125% of the FPG, but below 200%, the interview and the onsite observation, through a test applicant of the PIKA system, indicated that a "spend-down," which consists of applying permissible deductions to the applicant's income, is correctly inputted into PIKA by intake staff. The permissible deductions, pursuant to 45 CFR § 1611.5(a)(4), include, but are not limited to rent/mortgage, vehicle payment, child care, child support, spousal maintenance, employment expenses (*i.e.*, uniforms, dues), payroll taxes, and medical expenses. If deductions are applied, the onsite demonstrations evidenced that the ACMS deducts the applicable amounts and calculates the resulting total.

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

Intake staff articulated the asset ceiling limits and were familiar with the categories of assets that could be excluded by CLS. In addition, the excludable assets are also listed in PIKA.

4. 45 CFR § 1611.7(a)(1) Reasonable Income Prospects Screening:

Reasonable income prospects screening is not conducted and the question is not a part of intake staff's intake screening practices.

5. 45 CFR Part 1626 Citizenship and Eligible Alien Status Screening:

Intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. The citizenship form contains a citizenship attestation format that is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5. Intake staff reported that citizenship status is verified during intake screening and when necessary, documentation of eligible alien status is obtained before completing the intake process.

6. Program Letter 06-2, Violence Against Women Act ("VAWA") 2006:

Intake staff were able to articulate the applicability of 45 CFR § 1626.4 and Program Letter 06-2, VAWA 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien.

7. Outreach:

Intake staff indicated that the office does not conduct any outreach activities, aside from the divorce workshop that was discussed *supra*. As noted above, the attendees of the workshop are CLS clients whose cases have been accepted, and who have been screened for eligibility, prior to attending the workshop.

Recommendations and Required Corrective Actions:

Pursuant to the requirements of 45 CFR § 1611.7(a)(1), the DR recommended that CLS ensure that all computerized and manual intake forms, along with CLS' PIKA system, properly screen for an applicant's reasonable income prospects.

Pursuant to the requirements of 45 CFR § 1611.7(a)(1), the DR further recommended that CLS conduct intake staff training regarding screening all applicants for reasonable income prospects.

In its response to the DR regarding these two (2) recommendations, CLS stated that its manual intake form has been revised to include a question regarding an applicant's prospective income and has instructed intake staff on how to properly inquire and ascertain an applicant's income prospects. A copy of the revised intake form, which was included in the response, now contains a question regarding an applicant's prospective income, and CLS' PIKA has been modified to include a prospective income field. CLS further stated that more training will be provided to all CLS staff regarding reasonable income prospects screening at the conference scheduled to take place in August 2013.

Pursuant to the requirements of 45 CFR Part 1611, the DR instructed CLS to ensure that only those over-income factors listed in 45 CFR § 1611.5(a)(4)(ii), and only those assets meeting the definition contained in 45 CFR § 1611.2, would be considered during the eligibility determination process. To facilitate this process, the DR recommended that CLS revise all manual intake applications, as well as CLS' PIKA system, to reflect only those over-income factors that are listed in 45 CFR § 1611.5(a)(4)(ii), and include only those assets meeting the definition contained in 45 CFR § 1611.2.

In its response to the DR, CLS asserted that both the manual intake form and CLS' PIKA have been changed to reflect that only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii) and only those assets meeting the definition contained in 45 CFR § 1611.2 would be considered during the financial eligibility screening process. CLS also attached copies of the revised TAP intake form and its PIKA menu of factors, which lists "unreimbursed medical expenses" as an applicable factor, and contains only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii). CLS further indicated that it has revised its manual intake form and financial eligibility policy to meet the requirements of 45 CFR § 1611.2(d). The response

included a copy of CLS' revised intake application, which authorizes the inclusion of stocks and bonds to the extent that they are actually and readily available to the application. The response further indicated that intake screeners have been provided with instructions regarding how to determine asset eligibility. CLS stated that it plans to provide training to all staff regarding the newly revised CLS financial eligibility policy during a conference scheduled to take place August 22-23, 2013.

Pursuant to the requirements of 45 CFR Part 1626, the DR recommended that CLS conduct intake staff training to ensure that every walk-in applicant is appropriately and timely screened and a written citizenship attestation, or evidence of timely review of alien eligibility documentation, is obtained for all walk-in applicants when applicable. This action will ensure that the corrective action required in Finding 5 *infra* will be accomplished.

In response to the DR, CLS indicated that it has taken corrective action to ensure that it obtains properly executed written citizenship attestations or verifications of alien eligibility. CLS further indicated that every office will be required to obtain attestations or verifications when an applicant first makes in-person contact with any CLS staff. CLS also included a copy of the revised citizenship eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

For consistency in intake screening procedures, the DR recommended that CLS utilize one (1) intake application for program-wide use.

In its response to the DR, CLS stated that it has developed a program-wide manual intake form to be used in all offices; included in its response was the program-wide form. Additionally, CLS indicated that all staff would receive training on the form at the all-staff conference in August 2013.

The DR instructed CLS to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying, documenting, and applying over-income authorized exceptions and exempt assets.

In its response to the DR, CLS asserted that both the manual intake form and CLS' PIKA have been changed to reflect that only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii) shall be considered as applicable factors. CLS also attached copies of the revised TAP intake form and its PIKA menu of factors, which lists "unreimbursed medical expenses" as applicable factors, and includes only those factors listed in 45 CFR § 1611.5(a)(4)(ii) as over-income factors. CLS further indicated that it has revised its manual intake form and financial eligibility policy to meet the requirements of 45 CFR § 1611.2(d). The response included a copy of CLS' revised intake application, which authorizes the inclusion of stocks and bonds to the extent that they are actually and readily available to the application. The response further indicated that intake screeners are now provided with instructions regarding how to determine asset eligibility. Additionally, CLS stated that it has made the recommended changes to its financial eligibility policy to "ensure consistent application, program-wide, of our

newly revised financial eligibility policy.” CLS included a copy of the revised policy, which was approved by the Board on May 1, 2013, in its response and stated that it plans to provide training to all staff regarding the newly revised CLS financial eligibility policy during a conference scheduled to take place August 22-23, 2013, so that the requirements of 45 CFR Part 1611 are met.

Finding 3: Sampled cases evidenced that CLS substantially complies with the income eligibility 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). There were a limited number of cases reviewed that lacked the eligibility documentation required by 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3. Additionally, CLS’ revised income eligibility policy is compliant with 45 CFR Part 1611.

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.⁴ *See* 45 CFR § 1611.3(c)(1) and 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.

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) 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.

CLS substantially complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income did not exceed 125% of the poverty guidelines. There were a limited number of cases reviewed that lacked the eligibility documentation required by 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3. *See* Case No. 19-06-012174. In this

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

case, the client had a household of one (1) person and an annual income of \$15,000.00. When the client was screened in 2006, 125% of the FPG would have been \$12,250.00; however, no over-income exceptions were noted in the file. *See also* Case No. 19-10-054497. In this case, the client had a household of three (3) persons and reported an annual income of \$28,000.00. When the client was screened in 2010, 125% of the FPG would have been \$22,888.00; however, no over-income exceptions were noted. *See also* Case No. 19-06-013001. This file involved a client whose household income exceeded CLS' annual income ceiling, but lacked documentation of CLS' consideration of any of the authorized factors adopted by CLS as a part of its financial eligibility policy. In all of the above-referenced case files, absent documentation that the clients were financially eligible, LSC funds should not have been used to support the legal assistance provided to the clients, nor should these cases have been included in CLS' CSR data submissions.

While onsite, it was noted that CLS' financial eligibility policy was not fully compliant with 45 CFR Part 1611. The CLS policy that was provided for review in advance of the visit was prepared based, in part, on the prior version of 45 CFR Part 1611. As such, it did not incorporate the requirement of 45 CFR § 1611.7(a)(1), that the income prospects of all applicants be checked prior to determining financial eligibility. Additionally, the policy did not enumerate the current authorized over-income factors that may be applied when an applicant's income is between 125% and 200%, or exceeds 200%, of the FPG, pursuant to 45 CFR § 1611.5, or correctly cite to assets that would be considered exempt from being included in an applicant's asset calculation, pursuant to 45 CFR § 1611.3(d)(1). The policy also did not contain a group eligibility policy, as required by 45 CFR § 1611.6, and referred to 45 CFR Part 1611 as authority for LSC to review client eligibility information, as opposed to Grant Assurances Numbers 10, 11, and 12, Section 509(h), P.L. 104-134, 110 Stat. 1321 (1996), and Protocol Regarding Access to Information in Grant Recipients' Files (January 5, 2044). Pursuant to onsite discussions with the Executive Director regarding CLS' financial eligibility policy, the policy was revised to reflect all of the above-referenced recommendations. The revised policy was reviewed in the weeks following the visit and was determined to be compliant with the requirements of 45 CFR Part 1611. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised financial eligibility policy once it was approved by its Board.

Required Corrective Action:

As noted in Finding 2 above, the DR instructed CLS to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying, documenting, and applying over-income authorized exceptions.

In its response to the DR, CLS stated that it agrees with this finding and has made the recommended changes to its financial eligibility policy to "ensure consistent application, program-wide, of our newly revised financial eligibility policy." CLS also included a copy of the revised financial eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

Finding 4: Sampled cases evidenced that CLS substantially complies with the asset eligibility documentation requirements of 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. There were a limited number of cases that did not contain the documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. CLS' revised asset eligibility policy is compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e).

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.⁵ *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 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.

With the exception of a limited number of cases, the majority of case files reviewed contained the documentation to comply with the requirements of 45 CFR § 1611.3(d)(2). *See* Case No. 19-06-013617. Review of this case file indicated that the client had a six (6) person household, with \$15,000.00 in assets. In this instance, CLS' asset limit would have been \$10,000.00; however, the file did not contain evidence that the asset ceiling was waived in accordance with 45 CFR § 1611.3(d)(2). *See also* Case No. 19-06-013194. Review of this case file indicated that the client had a six (6) person household and \$20,000.00 in assets. In this instance, CLS' asset limit would have been \$10,000; however, the file did not contain evidence that the asset ceiling was waived in accordance with 45 CFR § 1611.3(d)(2).

Review of Case No. 19-06-014587 indicated that the client had a four (4) person household, with \$10,000.00 in assets. In this instance, CLS' asset limit would have been \$8,000.00; however the file did not contain evidence that the asset ceiling had been waived in accordance with 45 CFR § 1611.3(d)(2). *See also* Case No. 19-06-013374. Review of this case revealed that the client had an eight (8) person household, with \$85,000.00 in assets. In this instance, CLS' asset limit would have been \$12,000.00; however, the file did not contain evidence that the asset ceiling had

⁵ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

been waived in accordance with 45 CFR § 1611.3(d)(2). In both of the above-referenced cases, CLS case review intermediaries indicated a strong likelihood that the value of assets listed was a typographical error.

The CLS asset policy that was provided for review in advance of the visit referred to the terms “liquid asset” and “non-liquid asset” in its determination of financial eligibility, but did not define the terms within the policy. Pursuant to onsite discussions with the Executive Director, the policy was revised to ensure that, pursuant to 45 CFR §§ 1611.3(d)(1) and 1611.2(d), only non-excludable assets that are both readily convertible to cash and available to the applicant would be considered when determining whether the asset ceiling has been reached. Specifically, CLS removed the distinction between non-liquid and liquid assets and amended the policy to reflect that only assets, as defined in 45 CFR § 1611.2(d), would be considered.

With respect to 45 CFR §§ 1611.3(d)(1) and (e), the CLS policy that was provided for review in advance of the visit indicated that the following would not be considered assets and would be exempt from all asset calculations:

1. The applicant’s residence
2. One vehicle per licensed driver in the household
3. Personal or household property
4. Farmland or work related equipment essential to employment or self-employment
5. Cash value of IRA or 401k
6. All assets excluded under the Food Stamp, AFDC and SSI programs

The list of excludable assets found in 45 CFR § 1611.3(d)(1) is an exhaustive list and cannot be added to. As such, while onsite, CLS was advised to revise the exempt asset list in its financial eligibility policy to include only those items listed in 45 CFR § 1611.3(d)(1). Additionally, it was relayed that if an asset was deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption.

Pursuant to onsite discussions with the Executive Director regarding CLS’ financial eligibility policy, the policy was revised in the weeks following the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR § 1611.3(d)(1) and (e). The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised financial eligibility policy once it was approved by its Board.

Required Corrective Action:

As noted in Finding 2 above, the DR instructed CLS to ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR

Part 1611 are met, specifically with respect to verifying, documenting, and applying exempt assets, and asset limit waivers.

In its response to the DR, CLS stated that it agrees with this finding and has made the recommended changes to its financial eligibility policy with respect to “verifying, documenting, and applying exempt assets, and asset limit waivers.” CLS also included a copy of the revised policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

Finding 5: CLS is in non-compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were several case files reviewed that did not contain citizenship attestations and/or verifications of alien eligibility. CLS’ revised policy is in compliance with 45 CFR Part 1626.

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. *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 (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.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.

Sampled cases evidenced non-compliance with the documentation requirements of 45 CFR § 1626.6. There were several case files reviewed that did not contain executed citizenship attestations. *See* Case Nos. 13-08-035658, 23-12-071385, 6-12-074442, 25-09-041422, 23-12-073985, 23-12-071233, 12-08-006999, 25-11-068970, 25-11-065165, 21-10-053847, 21-10-

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

056903, and 11-10-056823. The case notes in these cases indicated that the cases were opened after January 1, 2008, there was in person contact between the client and a CLS staff worker and/or attorney, and that the client verbally attested to their citizenship prior to receiving legal assistance.

In Case Nos. 19-12-072923 and 19-12-071342, the PIKA eligibility screening indicated that the applicants were Permanent Legal Residents. However, the case review intermediary indicated that the documentation supporting the applicants' status as permanent legal residents was contained in the hard copies of the case files, which had been accidentally included in a stack of old files slated for destruction.

The citizenship/alien eligibility policy that was provided by CLS for review in advance of the visit indicated that CLS could provide services to eligible aliens, but did not list all of the categories of eligibility, or the documentation required to be reviewed in order to determine eligibility. While onsite, it was recommended that the policy be revised to include the alien eligibility categories and enumerate those items that must be reviewed prior to rendering legal assistance, pursuant to 45 CFR §§ 1626.5, 1626.6, 1626.7, 1626.10, 1626.11, and Appendix to Part 1626. Additionally, the policy provided in advance of the visit did not list and define all pertinent terms referenced in the regulation, and contained many outdated provisions that were replaced and/or altered when those parts of the regulation were updated. While onsite, it was recommended that the policy be revised to reflect all of the above-referenced changes.

Pursuant to onsite discussion with the Executive Director, the policy was revised in the weeks following the visit to include the alien eligibility categories, enumerate those items that must be reviewed prior to rendering legal assistance, provide the most recent language of the regulation, and list and define all pertinent terms referenced in the regulation. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1626. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1626 policy once it was approved by its Board.

Required Corrective Action:

The DR instructed CLS to ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate.

In response to the DR, CLS indicated that it has taken corrective action to ensure that it obtains properly executed written citizenship attestations or verifications of alien eligibility for all cases, when required. CLS further indicated that every office will now be required to obtain attestations or verifications when an applicant first makes in-person contact with any CLS staff. CLS also included a copy of the revised citizenship eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

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

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

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

Case files reviewed indicated that CLS is in substantial compliance with the requirements of 45 CFR § 1611.9. There were a limited number of case files reviewed that did not contain a retainer agreement where required. *See* Case No. 13-08-035658.⁸ This case was closed utilizing closing code "F," Negotiated Settlement without Litigation, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 23-12-070735. This case was closed utilizing closing code "H," Administrative Agency Decision, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 25-11-069074. This case was closed utilizing closing code "K," Other, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 23-11-067399. This case was closed utilizing closing code "L," Extensive Service, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 21-11-062505. This case was closed utilizing closing code "L," Extensive Service, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 21-10-053847.⁹ This case was closed utilizing closing code "H," Administrative Agency Decision, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement. *See also* Case No. 21-11-060877. This case was closed utilizing closing code "L," Extensive Service, and did not contain an executed retainer agreement. Pursuant to the documentation requirements of 45 CFR § 1611.9, this case file was required to contain a written retainer agreement.

Additionally, there were case files reviewed where the retainer agreement did not contain an adequate scope of representation. *See* Case. Nos. 23-10-075835, 23-12-071808, 23-12-077289,

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.

⁸ This case file was also cited in Finding 5.

⁹ This case file was also cited in Finding 5.

23-09-048972, and 19-04-400067. The retainer agreements contained in these case files were timely executed; however, the agreements did not sufficiently identify the scope and/or subject matter of the representation, as required by 45 CFR § 1611.9(a).

Recommendation:

The DR recommended that CLS review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file, when required, and contain a detailed scope and subject matter of the representation.

In its response to the DR, CLS stated that it agrees with this finding and will “review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case files, when required, and contain appropriate details as to the scope and subject matter of representation.”

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). CLS’ revised policy is compliant with 45 CFR Part 1636.

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 CLS is compliant with the requirements of 45 CFR Part 1636. All case files reviewed contained a statement of fact where required.

The CLS policy provided for review in advance of the visit did not indicate that, pursuant to 45 CFR § 1636.2(a)(1), a separate notice may be provided to a defendant identifying the plaintiff(s), in lieu of identifying each plaintiff in a filed complaint. It was recommended that the policy be revised to reflect that an alternate notice is authorized by 45 CFR § 1636.2.

Pursuant to onsite discussions with the Executive Director regarding CLS’ statements of fact policy, the policy was revised in the weeks following the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1636. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1636 policy once it is approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS stated that it agrees with this finding and included a copy of the revised statements of fact policy, which was approved by the Board on May 1, 2013.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). CLS' revised policy on priorities is compliant with 45 CFR Part 1620.

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, OCE was provided a list of CLS' priorities. CLS identifies the following types of cases as within their priorities: support for families, maintaining economic stability, preserving the home, and assistance to migrant and seasonal workers.

Sampled case files reviewed evidenced that CLS is in compliance with 45 CFR Part 1620. All case files reviewed were within CLS' priorities.

The CLS policy provided for review in advance of the visit did not indicate that CLS would require staff to sign a written agreement acknowledging CLS' priorities and emergency case acceptance policy, pursuant to 45 CFR § 1620.6. The policy also did not indicate that CLS' priorities would be established on an annual basis, as required by 45 CFR § 1620.5, or detail the priority reporting requirements outlined in 45 CFR § 1620.7.

While onsite, it was recommended that the policy be revised to incorporate the above-referenced provisions. Pursuant to onsite discussions with the Executive Director regarding CLS' policy on priorities, the policy was revised in the weeks following the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1620. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1620 policy once it was approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS stated that it agrees with this finding and included a copy of the revised priorities policy, which was approved by the Board on May 1, 2013.

Finding 9: Sampled cases evidenced substantial 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.

Case files reviewed indicated that CLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.6. There were several cases reviewed that did not contain evidence of the legal assistance provided. *See* Case No. 21-11-069018. In this case, the case file notes indicated that the client was provided with legal information consisting of instructions on how to report the theft of a vehicle and contact the attorney general’s office, but was not provided with legal advice. *See also* Case No. 19-11-069253. In this case, the case file notes indicated that no advice was provided and the client decided not to proceed with the case. *See also* Case No. 19-11-069256. This case file contained no documentation of legal assistance. *See also* Case No. 21-10-049823. In this case, the case file notes indicated that the client was simply instructed to “get something in writing,” and no legal advice was provided. *See also* Case No. 21-10-050593. In this case, the case file notes indicated that the client unable to locate the adverse party and was instructed to seek the assistance of private counsel; no legal advice was documented in the case file. *See also* Case No. 21-10-051641. In this case, the case file notes indicated that the client was instructed by an intake staff member to obtain a copy of their lease agreement. The case was subsequently assigned to a CLS attorney and the responsible attorney was supposed to contact the adverse party but the case notes did not indicate that contact was made, or that any advice was provided. *See also* Case No. 21-10-050453. This case file contained no documentation of legal assistance.

Recommendation:

The DR recommended that CLS review all case files prior to file closing to ensure that the legal assistance provided is properly documented. The DR further stated that case files lacking documented legal assistance should not be reported to LSC during the CSR data submission.

In its response to the DR, CLS stated that it agrees with this finding and will review all case files prior to case closure to ensure proper documentation of legal assistance. CLS further indicated that cases lacking proper documentation will not be reported to LSC in its CSR data submission.

Finding 10: Sampled cases evidenced non-compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case closure categories).

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 (2008 Ed., as amended 2011), § 6.1.

The files reviewed demonstrated that CLS' application of the CSR case closing categories is not compliant with Chapters VIII and IX of the CSR Handbook (2008 Ed., as amended 2011). There were numerous cases reviewed that contained an incorrect closure code. *See* Case Nos. 13-08-035658¹⁰ and 23-10-05578. Case No. 13-08-035658 was closed as an "F," Negotiated Settlement Without Litigation. The case notes indicated that the responsible attorney assisted the client with obtaining relief from a public assistance organization that was attempting to collect funds from the client. The case file did not contain evidence of a settlement reached between the advocate and the organization. As such, the case should have been closed under closing code "A," Counsel and Advice, "B," Limited Action or "L," Extensive Service. Case No. 23-10-05578 was closed under closing code "K," Other. The case notes indicated that the responsible attorney provided advice to the client regarding a denial of public assistance and calculating a potential assistance award. There was no evidence in the case file that the advocate spoke to a third party on behalf of the client, or engaged in extensive research and review of documentation. As such, this case should have been closed under closing code "A," Counsel and Advice.

The following cases, Case Nos. 21-10-051031, 21-10-051439, and 19-10-053592, were closed under closing code "K," Other. However, the level of assistance documented in the case files indicated that closing code "L," Extensive Service, was the more applicable closing code. *See also* Case No. 21-11-070400. This case was closed under closing code "B," Limited Action. However, the level of assistance documented in the case file indicated that closing code "A," Counsel and Advice, was the more applicable closing code. *See also* Case No. 19-11-063603. This case file was closed utilizing closing code "F," Negotiated Settlement Without Litigation. However, the level of assistance documented in the case file was suggested that "B," Limited Action, was the more applicable closing code. *See also* Case Nos. 19-11-064426, 19-11-064581, and 19-11-065524. These cases were closed under closing code "H," Administrative Agency Decision. However, the level of assistance documented in the case files indicated that closing codes "B," Limited Action, or "F," Negotiated Settlement Without Litigation, would have been the more applicable closing code.

The following case, Case No. 19-12-075679, was closed using closing code "K," Other. However, the case file notes indicated that closing code "A," Counsel and Advice, was the more applicable closing code. *See also* Case Nos. 19-10-059717, 19-10-056125, 19-10-059389, 19-10-

¹⁰ This case was cited in Findings 5 and 6 above.

059885, 19-10-060735, and 19-11-061717. These case files were all closed utilizing closing code “L,” Extensive Service. However, the case notes indicated that closing code “B,” Limited Action, would have been the more applicable closing code. *See also* Case No. 19-09-049607. This case file was closed utilizing closing code “K,” Other. However, the case notes indicated that closing code “L,” Extensive Service, was the more applicable closing code. *See also* Case Nos. 19-10-058121, 19-11-062893, and 19-11-064279. These case files were closed using closing code “K,” Other. However, the case files notes indicated that closing code “B,” Limited Action, was the more applicable closing code. *See also* Case No. 19-10-050818. This case was closed utilizing closing code “L,” Extensive Service. However, the file notes indicated that closing code “A,” Counsel and Advice, was the more applicable closing code.

The above-referenced case review, as well as information received from case review intermediaries, revealed that closing code “K” was often being utilized to indicate that no legal advice was provided, when the proper code would have been “X,” which is CLS’ de-select code. It was further discovered that some CLS staff members mistakenly believed that the only closing code that could be utilized for cases serviced solely by a paralegal was “K,” Other, as opposed to “A,” Counsel and Advice, “B,” Limited Action, or “L,” Extensive Service.

Required Corrective Action and Recommendation:

The DR instructed CLS to ensure proper application of the CSR case closure code categories.

The DR further recommended that CLS conduct staff training to ensure proper application of the CSR case closure categories, specifically with respect to utilization of closing code “K,” Other.

In its response to the DR, CLS stated that it has taken action to ensure proper application of the CSR case closure codes. Specifically, the response stated that the matter was discussed with CLS managing attorneys in the monthly meetings that have taken place since the compliance visit and the case closure procedure has been modified to require that all cases be reviewed by a managing attorney, prior to case closure, to ensure that the proper closing code is selected. Additionally, CLS indicated that all staff will receive training regarding this requirement at the conference scheduled to take place in August 2013.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice 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).¹¹ There is, however, an exception for limited service cases opened

¹¹ 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., as amended 2011), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions

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, 2008 CSR Handbook, as amended 2011) 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).

Sampled cases reviewed evidenced that CLS is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3. There were a limited number of case files reviewed that were dormant or untimely closed. *See* Case No. 19-11-068693, which was an open case at the time of the review. The case notes indicated that the last legal activity occurred in October 2011. As such, pursuant to CSR Handbook (2008 Ed., as amended 2011), § 3.3(b), this case should have been closed on or before December 31, 2012. The case reviewer informed the case review intermediary that, in order to avoid the case being untimely closed, the case should be closed and reported in CLS' 2012 CSR data reporting. *See also* Case Nos. 19-06-006107 and 19-06-008742, which were both open cases at the time of the review. The case notes in these cases, as well as information obtained from the case review intermediary, revealed that these cases should have been closed on or before December 31, 2010, as the last legal activity occurred in 2009. CLS should take care to close these and other similar cases in a manner which ensures they are not included in past or future CSR data.

The case notes in Case No. 19-04-400067 indicated that this case was opened July 29, 2004, and remained open at the time of the onsite review.¹² However, the last legal activity documented in the case file was in February 2005. As such, this case is dormant and should not be included in any future CSR data reporting. *See also* Case No. 19-06-0006465. The case notes indicated that this case was opened May 30, 2006, and remained open at the time of the onsite review. However, the last legal activity documented in the case file was in January 2007. As such, this case is dormant and should not be included in any future CSR data reporting. *See also* Case No. 13-10-053498. The case notes indicated that this case was opened April 29, 2010, and closed February 3, 2011, under closing code "A," Counsel and Advice. The case notes further indicated that counsel and advice was provided to the client in 2010 and that the case should have been closed on or before December 31, 2010. As such, pursuant to CSR Handbook (2008 Ed., as amended 2011), § 3.3(a), this case was untimely closed. *See also* Case No. 25-11-064199. The case notes indicated that this case was opened April 27, 2011, and closed April 7, 2012. The case notes further indicated that brief services were provided to the client in 2011 and that the case should have been closed on or before December 31, 2011. As such, pursuant to CSR Handbook (2008 Ed., as amended 2011), § 3.3(a), this case was untimely closed.

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).

¹² This case was also cited in Finding 6 above.

Recommendation:

The DR recommended that CLS conduct periodic reviews of case management reports on open and closed cases, particularly those limited service files that remain open for an extended period of time, to ensure against dormancy and the reporting of untimely closed cases.

In its response to the DR, CLS indicated that it agrees with this finding and will “conduct periodic review of case management reports on open and closed cases, particularly those limited service files that remain open for an extended period of time, to ensure against dormancy and the reporting of untimely closed cases.”

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.

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

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 13: Review of CLS' policies and the list of attorneys who have engaged in the outside practice of law, as well as interviews with the Executive Director, three (3) Managing Attorneys, and the one (1) attorney who has engaged in the outside practice of law during the review period, revealed that CLS is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). CLS' revised outside practice of law policy is in compliance with 45 CFR Part 1604.

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.

During the compliance visit, CLS indicated that it had one (1) employee, an attorney, who engaged in pre-approved, outside practice of law. The attorney joined CLS at the beginning of 2013, after closing their private practice. Interviews with the newly employed attorney revealed that, in accordance with 45 CFR § 1604.4(c)(1), the attorney had a professional responsibility to close cases from their previous law practice and is currently doing so on the attorney's own time, as expeditiously as possible. The information regarding the number of outstanding cases and the anticipated closure dates was provided to the attorney's Managing Attorney, as well as to the Executive Director, in the form of a Memorandum, two (2) weeks prior to the attorney's first date of employment with CLS. Both the Managing Attorney and Executive Director signed off on the attorney's memorandum and permitted the attorney to take the necessary steps to close pending cases after joining CLS. Additionally, the attorney explained that a minimal amount of personal time has been used to resolve the cases that remained pending from the previous law practice, and anticipated that accrued or advanced vacation or administrative leave would be used to conduct business relating to the private practice that had to be accomplished during the work day. Review of the attorney's work space revealed a separate computer, stationary, cellular phone, and office supplies that are being used to conduct the outside practice of law. With the exception of the computer, all supplies and materials relating to the attorney's prior law practice were kept in a locked drawer that was separate from all other CLS materials. As such, no CLS resources are used to conduct outside practice of law, and the attorney does not identify CLS in any communication relating to the outside practice of law.

Interviews with the Executive Director, three (3) Managing Attorneys, and the one (1) attorney who has engaged in the outside practice of law during the review period, revealed that CLS is in compliance with the requirements of 45 CFR Part 1604.

The CLS policy provided for review in advance of the visit was created, in part, based on a prior version of the regulation. As such, there were many outdated provisions that have since been changed or revised in the current statute. For example, the policy provided for review did not indicate that, pursuant to 45 CFR § 1604.4, in order to permit outside practice of law, the Executive Director must first determine that the representation is consistent with the attorney's responsibilities to CLS' clients. As such, it was recommended that the pertinent sentence should be rewritten as such: "The Executive Director may permit a full-time staff attorney to engage in

the outside practice of law only if the Executive Director determines that the representation is consistent with the attorney's responsibilities to CLS' clients and..."

It was also relayed during the visit that many of the exceptions listed in CLS' provided policy did not currently exist, as they were found in the old regulation and the new regulation revised the language concerning many exceptions. It was recommended that the section regarding permissible outside practice of law be re-written as follows:

Outside practice of law is permissible if the attorney is: (a) newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; (b) acting on behalf of him or herself, a close friend, family member or another member of CLS' staff; (c) acting on behalf of a religious community or charitable group; or (d) participating in a voluntary *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group.

Additionally, the policy did not provide instances where compensation for outside practice of law was permissible. The section regarding compensation was advised to be re-written as follows:

An attorney is not permitted to receive any compensation for the outside practice of law except in the case of a court appointment, consistent with this policy, or in the case where an attorney is newly employed and has a professional responsibility to close cases from a previous law practice and does so on their own time, as expeditiously as possible.

The provided policy did not include a section that discussed use of CLS' resources. This was discussed with the Executive Director and it was relayed that, if CLS wanted to allow attorneys to use CLS resources for permissible outside practice of law, this section should be written as follows:

- a.) For cases undertaken where the attorney is newly employed and has a professional responsibility to close cases from a previous law practice, the attorney may use *de minimis* amounts of CLS' resources for permissible outside practice of law if necessary to carry out the attorney's professional responsibilities so long as CLS' resources are not used for any prohibited activities.
- b.) For cases undertaken pursuant to 1(b) through (d) above, an attorney may use limited amounts of CLS' resources for permissible outside practice of law if necessary to carry out the attorney's professional responsibilities so long as CLS' resources are not used for any prohibited activities.

In the alternative, it was relayed that, if CLS did not wish to permit attorneys to use CLS resources for permissible outside practice of law, this section should be written as follows:

Under no circumstances may any CLS resources be used for permissible or non-permissible outside practice of law.

The provided policy also did not include a section that discussed court appointments. This was discussed with the Executive Director during the visit and it was relayed that, if CLS wanted to allow attorneys to accept court appointments, this section should be written as follows:

Full-time attorneys are permitted to accept court appointments if the Executive Director determines that:

- a.) Such appointment is consistent with CLS' primary responsibility to provide legal assistance to eligible clients in civil matters;
- b.) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and
- c.) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to CLS any compensation received.

It is permissible for a full-time attorney to identify CLS as his or her employer when engaged in representation to a court appointment.

If, under applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide *pro bono* legal assistance in addition to the attorney's work on behalf of CLS' clients, then such legal assistance shall be treated in the same manner as court appointments pursuant to this policy, provided that the activities are not otherwise prohibited by the LSC Act, applicable appropriations law, or LSC regulations.

In the alternative, it was relayed that, if CLS did not wish to permit attorneys to accept court appointments, this section could be written as follows:

Under no circumstances may any CLS full-time attorney accept a non-mandated court appointment.

Pursuant to onsite discussions with the Executive Director, the policy was revised to incorporate all of the above-mentioned recommendations in the weeks following the visit. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1604. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1604 policy once it was approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS stated that it agrees with this finding and included a copy of the revised outside practice of law policy, which was approved by the Board on May 1, 2013

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.

During the compliance visit, CLS' written policy concerning the requirements of 45 CFR Part 1608 was reviewed. The policy was found to be compliant and conforming to the requirements contained in 45 CFR Part 1608. A limited review of various accounting documents (*e.g.*, cash receipts register, cash disbursement journal, various general ledger expense accounts, vendor list, etc.) and supporting documentation for the period of January 1, 2010 through November 30, 2012, as well as interviews with CLS' Director of Finance and Information Systems and Executive Director, disclosed that CLS 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) and 1608.4(b). In addition, CLS has written rules prohibiting political activity contained in their Collective Bargaining Agreements, which are available to all employees and are also used as a training document for all new staff.

A Cash Disbursement report generated from the CLS accounting system representing all non-payroll check payments to persons and entities from CLS during 2011 was reviewed for disbursements to possible political entities with a negative result, which indicated no improper disbursements. Additionally, web pages of the CLS on-line website (www.clsaz.org), and a search of on-line news articles mentioning CLS, were reviewed for indications of relationships with political activities or entities. A review of such materials found no indication of prohibited political activities.

A comprehensive review of CLS' pamphlets, brochures, flyers, etc. was conducted during the onsite visit. Review of the above-referenced materials revealed that all collected information was found to be free of any prohibited political message, expression, symbol, image, or allusion, and in compliance with 45 CFR Part 1608.

Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies indicated that CLS is not involved in such activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, CLS' revised policy on fee generating cases is in compliance with 45 CFR Part 1609.

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).

Review of CLS' accounting records revealed that CLS received awards for attorney's fees and cost reimbursement during the review period in a manner consistent with the requirements of 45 CFR §§ 1609.4 and 1609.5. The total attorneys' fees receipts for 2010 included two (2) awards totaling \$1,350.00; the total for 2011 included eight (8) awards totaling \$23,585.00; and the total for 2012 included five (5) awards totaling \$6,500.00. All reviewed attorneys' fees awards were properly allocated as derivative income to LSC funding and were received in a manner consistent with the requirements of 45 CFR Part 1609.

In addition to attorney's fees and cost recoveries, CLS makes an effort to seek *Cy Près* awards. *Cy Près* awards allow portions of the funds awarded in class action cases to be used to promote the interests of class members, rather than reverting to a defendant. This is frequently done when direct distribution to individual class members is not economically feasible, or where funds remain after class members are given a full opportunity to make a claim. Such distributions are made based on recommendations to the court rather than participation in the legal process. In 2011, CLS received \$2,000.00 in a *Cy Près* award, which was properly documented in accordance with 45 CFR Part 1609. CLS did not participate in a class action to receive the *Cy Près* award; the award was provided to CLS based on recommendations to the court regarding suitable award recipients.

The CLS policy provided for review in advance of the visit did not state the accounting requirements for receipts of attorneys' fees, or the procedure for accepting client reimbursement, pursuant to 45 CFR §§ 1609.4 and 1609.5. It was relayed by a member of CLS' accounting staff

that the policy had been informally supplemented by training and/or an employee orientation material which indicated that, as of December 16, 2009, attorneys could seek and obtain attorney's fees. Pursuant to onsite discussions with the Executive Director regarding CLS' policy on fee-generating cases, the policy was revised in the weeks following the visit to reflect all of the above-referenced recommendations. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1609. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1609 policy once it is approved by its Board.

Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

In its response to the DR, CLS stated that it agrees with this finding and included a copy of the revised policy on fee-generating cases, which was approved by the Board on May 1, 2013.

Finding 16: Review of CLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff demonstrated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

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

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

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

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

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

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

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

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

Observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 in reference to sharing physical space with a non-LSC entity engaged in restricted activities. In addition, review of CLS accounting and financial records for 2010, 2011, and 2012 indicated compliance with 45 CFR Part 1610, in that there was no indication of a transfer of LSC funds within the meaning of 45 CFR Part 1610.2(g), and the CLS Board Chair timely submitted CLS' annual Certification of Program Integrity to LSC as required by 45 CFR Part 1610.8(b), on behalf of the CLS Board of Directors.

Review of CLS' fiscal records revealed that CLS maintains a Volunteer Lawyers Program ("VLP") as a part of its PAI program. In Maricopa County (Phoenix), the VLP operates within CLS' office space. The CLS website describes the VLP as "...a *joint project* of CLS and the Maricopa County Bar Association, provid[ing] civil legal assistance to low-income Maricopa County residents. VLP clients receive legal advice, brief service or direct representation by private attorneys who volunteer their time and services." However, it was determined during the onsite review that the VLP is not an entity separate from CLS, the Maricopa County Bar Association participation is advisory in nature, and VLP priorities, management, and funding are established and controlled solely by CLS.

All CLS staff are employed under Collective Bargaining Agreements, with attorneys being covered under the Community Legal Services Attorney Union agreement, and all other staff being covered under the United Food and Commercial Workers Union, Local 99 agreement. Incorporated in each agreement is the following provision: *B. Prohibited Activities Employees of CLS are subject to the applicable regulations of the Legal Services Corporation dealing with prohibited activities.*

Recipients are required by 45 CFR § 1610.5(b) to provide sources of funds equaling or exceeding \$250.00 with written notification of the prohibitions and conditions on use of the funds resulting from the receipt of LSC funding. CLS does not have a written policy regarding this requirement; however, the Resource Development Director has written desk procedures that require a written response for all monetary contributions, regardless of the amount, as a feature of their ongoing fundraising program, to ensure that providers of multiple individual contributions equaling or exceeding \$250 are notified of the restrictions. The Contribution Acknowledgement and Tax Statement form furnished to all contributors includes a notice that is compliant with the requirements of 45 CFR § 1610.5(b). The pertinent part of the notice reads as such, “*Community Legal Services is funded in part by the Legal Services Corporation (LSC). As a condition of the funding it ...is restricted from engaging in certain activities in all of its legal work, including work supported by other funding sources. CLS may not expend funds for any activity prohibited by the Legal Services Corporation Act, 42 USC 2996 et. seq. or Public Law 104-13.....*” Review of sampled sources of funding received by CLS in excess of \$250.00 demonstrated compliance with the requirements of 45 CFR § 1610.5(b). In addition, for contributions that were the result of CLS’ application for funding (e.g., United Way), review revealed that the restrictions on use of the funds, if awarded, were incorporated into the application for funding.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 17: CLS is substantially compliant with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of PAI cases. Additionally, CLS is substantially compliant 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.

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.

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).

Fiscal Review

The Audited Financial Statement ("AFS") for Fiscal Year Ending December 31, 2011 reported CLS' PAI work as a separate expenditure, as required by 45 CFR § 1614.3(e)(2). The AFS reported a total PAI expenditure of \$747,901.00 which translates to 17.4% of the total basic field grant (\$4,299,661.00), complying with the 12.5% expenditure requirement outlined in 45 CFR § 1614.2(b)(1). A review of the PAI cost allocation, PAI detail costs of all funders, 2011 Audit Report, and allocation of PAI staff salary for the calendar year ending December 31, 2011, disclosed that CLS correctly allocates the salaries of attorneys and paralegals on total, workable hours.

Review of eight (8) of CLS' PAI staff members' personnel time records for the month of November 2011, with time charged to PAI, evidenced compliance with 45 CFR Part 1614, in that the time reported was PAI-related. Review of CLS' PAI records also revealed that non-personnel costs are being allocated on the basis of reasonable operating data, in compliance with the requirement of 45 CFR § 1614.3(e)(1)(i). In addition, several direct costs allocated to PAI were reviewed and were found to be related to PAI activities, and were documented and approved in accordance with 45 CFR Part 1614. However, review of PAI travel costs indicated that a minimal amount of travel costs were being allocated to CLS' PAI expenditure on a percentage basis, rather than being allocated by actual costs. Additionally, review of CLS' staff PAI allocation revealed that CLS is not allocating staff administrative costs to its PAI expenditure, as required by 45 CFR § 1614.3(e)(1)(i). With respect to PAI allocations, in the DR, CLS was advised that it should allocate all PAI travel related costs as actual costs, and not on a percentage basis, and should ensure that all administrative and support staff expenses related to PAI activities are allocated as a PAI cost, in order to comply with the requirements of 45 CFR § 1614.3(e)(1)(i).

Phoenix Office PAI Review

The Phoenix office's PAI efforts are coordinated primarily through its Director of the VLP, who is an attorney. The Director indicated that she has been with CLS for approximately 19 years. Additionally, there are three (3) PAI Coordinators and two (2) paralegals that provide support for CLS' PAI component.

Intake Process: The intake screening process for a PAI case is no different than the intake process for a staff case. As a result, the intake process will not be discussed in this section, as this matter was covered in detail in Finding No. 2. Interviews with the manager of the TAP Unit indicated that the decision of whether a case is referred to a staff attorney or is referred to the VLP is made at the intake screening level. It was further stated that a box is marked in PIKA if the case is referred to the VLP.

From interviews with both the TAP Unit and the VLP Director, it appears that most applicants (telephone and walk-in) go through intake screening through the TAP Unit and are then referred to the VLP. Once a case has been referred, it becomes the VLP's responsibility to ensure that all proper eligibility documentation is in the file before any additional action is taken (e.g., referring the case to a PAI attorney). After ensuring that all eligibility documentation is in the file, VLP staff refers the case to a private attorney, based on the attorney's previously reported interest in providing assistance in specific types of case (e.g., family law, trusts and estates, etc.). For each referred case, the Director of the VLP finds an attorney to accept the case for brief service and/or extensive service. Each attorney completes a VLP Attorney Enrollment Form, which provides the Director with the attorney's contact information and supplemental information that will assist in the referral process. The Director reported that the private attorney checks for conflicts. If the attorney accepts the case, a referral letter is sent by the responsible PAI Coordinator to the applicant with the attorney's name and contact information. If the attorney is not able to accept the case, the case is then referred to another private attorney.

Referrals: The VLP process at CLS is a two-part system. First, there is an initial interview/initial evaluation between the client and a PAI attorney. As the majority of referred PAI cases involve debt collection or landlord/tenant law, the initial interviews/evaluations most often occur during a scheduled Debt Counseling Clinic or a Tenants' Rights session. PAI interviews revealed that the Debt Counseling and Tenants' Right sessions are PAI clinics where the participants are pre-screened for eligibility by the TAP Unit and, once they are deemed eligible for services, are advised to bring any paperwork demonstrating eligibility to the session. The Director indicated that advice is usually provided to the client during the evaluation and occasionally, the PAI attorney may enter the results of the interview directly into PIKA.

There is a weekly staffing meeting in order to review the summaries from the completed initial evaluations. From there, determinations are made as to whether a case should be closed or if the case requires extensive services. If the case requires additional legal service beyond advice and counsel, it is referred to a private attorney. This may or may not be the same attorney who conducted the initial evaluation and/or presided over the Debt Counseling Clinic or Tenant's Rights Session. If the attorney accepts the case, a member of the VLP staff sends a packet to the attorney that includes a cover letter, notes from the initial interview, and a case closure form.

Case closure: The VLP Director explained that if the case goes no further than the initial interview/initial evaluation stage, then the closing code is assigned at the staffing meeting. However, if the case is referred to a PAI attorney for extensive service, then upon completion of legal assistance, the attorney returns a completed case closure form, which was a part of the referral packet sent to the attorney upon case acceptance. In the case closure form, the attorney assigns the closing code classification and describes the case outcome.

Oversight: From interviews with the VLP Director and VLP staff, it appears that a sporadic tickler system is used to provide case updates depending on case complexity. For example, the VLP Director conveyed that a “simple” case should be completed within a year. VLP staff did not indicate that a structured oversight system was in place to ensure that VLP cases were timely closed. As a result of this oversight structure, there were sampled cases reviewed that evidenced insufficient case status update information.

Interviews and case review further revealed that the VLP needs to improve its case oversight and follow-up procedures/systems. The VLP Director indicated that she is reluctant to send status update requests frequently, as she does not want to frustrate the attorneys. During the onsite review, an attempt was made to explain that effective oversight is a requirement and that it can sometimes be accomplished without direct contact with the attorney (*e.g.*, through online access to case information through PACER or the judiciary website).

In addition, in the DR, OCE advised that VLP staff needs additional training regarding the requirements of CSR Handbook (2008 Ed., as amended 2011), § 5.5 regarding “Citizenship and Alien Eligibility.” Although the TAP unit conducts the initial intake screening, case review evidenced instances where the case file contained undated citizenship attestations or no attestation at all. In these instances, it was the responsibility of the VLP staff to obtain a properly executed citizenship attestation or verification of alien eligibility.

Yavapai Office PAI Review

Yavapai’s PAI efforts are coordinated through its *Pro Bono* Coordinator, who is not an attorney. The *Pro Bono* Coordinator indicated that she has been employed with CLS for nine (9) years and is supervised by a Managing Attorney located in the Yavapai office.

Intake Process: The intake screening process for a PAI case is no different than it is for a staff case. As such, the intake process will not be discussed in this section, as this matter was covered in detail in Finding No. 2.

PAI Clinic: Interviews indicated that the Yavapai office has a PAI clinic that assists a women and children’s shelter called the Stepping Stones Shelter. This clinic occurs on the second Thursday of every month at the shelter. There is a designated volunteer attorney who meets with the women one-on-one. Most of the women are seeking a divorce, so the attorney will provide them with advice regarding their individual circumstances, how to obtain proper service, etc. The Coordinator indicated that the women are screened beforehand using the same screening methods described *supra* for staff cases.

Referrals: For all non-clinic cases, office staff will determine, at a meeting that occurs every other week, if the case will use too much of the office's resources, such that it would be better suited for a PAI attorney. Once the Coordinator finds an attorney who will accept the case, a packet is sent to the attorney with case information and a case status report form. The client is sent a letter with instructions on how to contact the attorney to schedule an appointment.

Oversight: The Coordinator indicated that case status information is obtained every 30 days, either through contacting the attorney and/or client by phone or email, and/or reviewing the judiciary case information website. Based on interviews with the Coordinator and case review, the PAI program at the Yavapai office is well functioning with effective case oversight and follow-up. In addition, case review evidenced case files that contained adequate descriptions of the legal assistance provided.

Case closure: At the conclusion of the case, the attorney returns a completed case closure report, explaining the services provided and assigning a closing code. The Coordinator reviews the information on the form in order to determine if the assigned closing code is correct and makes closing code corrections as necessary.

Special considerations: During interviews with the Coordinator, it was indicated that the Yavapai office participates in the following three (3) events:

1. A nationwide event started by the American Bar Association known as "Law Day," occurs every May. According to the Coordinator, attorneys volunteer in two (2) hour intervals to meet one-on-one with county residents regarding their need for legal information. Participants are provided a disclaimer form that they are required to sign. This disclaimer informs the participants that the attorneys are providing legal information, the information is not intended to be legal advice, and that the participants should to contact an attorney for assistance in resolving their legal issue.
2. "Stand Down" is an event for veterans where, according to the Coordinator, volunteer attorneys provide general answers to their legal issues. The Coordinator indicated that this does not take place one-on-one; however, she explained that the attorneys help to negotiate settlement agreements and/or lesser sentences. It was not immediately clear, based on the interviews, how negotiations were able to occur without the formation of a client-attorney relationship. Therefore, additional information was requested from the Executive Director at the exit conference regarding the scope of the legal assistance provided, as well as clarification as to what types of issues the attorneys are helping to resolve. The Executive Director indicated that legal information, not legal representation, is provided at the "Stand Down" event, and that the information provided is related to the veteran's case type (e.g., housing, family law, etc.). The Executive Director also indicated that the types of cases for which legal information is provided are ones that do not violate the prohibitions contained within any LSC regulation. However, the Executive Director was unable to provide any written materials generated in conjunction with the event.

3. The Yavapai office also coordinates a “Family Law Ombudsman Program.” According to provided reference materials, the program is a Superior Court program that CLS administers. The *Pro Bono* Coordinator schedules appointments and recruits volunteer attorneys to provide services at the program. According to the *Pro Bono* Coordinator, individuals can have an attorney review their paperwork, but advice is not provided. This program appeared very similar to the PAI clinic that occurs at the Stepping Stones Shelter, which was discussed above, where clients do undergo intake screening prior to meeting with an attorney.

On the last day of the onsite visit, the “Stand Down” and “Family Law Ombudsman” programs were discussed with the Executive Director. The Executive Director indicated that the Yavapai office’s participation in these programs did not result in legal advice being provided to attendees, but rather legal information was provided by private, volunteer attorneys. Nonetheless, as a precaution, the Executive Director was reminded that for any instance where legal advice and/or representation is being provided pursuant to a CLS sponsored outreach activity, CLS will have to ensure, at a minimum, that the recipient of the representation had been properly screened for citizenship/alien eligibility, as well as for compliance with any and all LSC regulations governing assistance provided with LSC and non-LSC funds, prior to receiving the advice and/or representation.

Yuma Office PAI Review

Intake Process: The intake screening process for a Yuma PAI case is no different than it is for a staff case, which was discussed in detail in Finding No. 2. The Yuma office has one (1) PAI Coordinator, who has the title of *Pro Bono* Coordinator, who is not an attorney. The *Pro Bono* Coordinator is supervised by the Director of Litigation, who is located in CLS’ central office.

Referrals: When it has been determined that a case should be placed with a PAI attorney, the Coordinator places the case with a PAI attorney, based upon the attorney’s previously reported interest in certain types of cases. The *Pro Bono* Coordinator then asks the PAI attorney how long they anticipate the case will take, and makes a note in the case file and PIKA to follow up with the attorney on or before the date by which the attorney indicated that case would be closed.

Interviews with the *Pro Bono* Coordinator indicated that the office has difficulty placing cases with private attorneys, and as such, does not close many PAI cases. In an attempt to engage volunteer attorneys, the office has asked private attorneys to sign up for times during one (1) week approximately every six (6) months when they would be available to meet with a client to provide them with *pro bono* legal advice. Typically, attorneys only sign up to provide service for one week every six months or so and even then, attorney participation is usually minimal. On the week the attorneys have agreed to provide services, applicants who are found to be eligible for CLS’ services by Yuma’s intake staff are given the option to meet with a volunteer attorney to discuss the applicant’s legal problem. Interviews indicated that this office has not had much success in recruiting attorneys to volunteer. The office also has a sample PAI retainer agreement, guidelines, case acceptance letter, case status form, initial disposition form, and final disposition form, which it would use regularly if the office was more able to recruit PAI attorneys.

The vast majority of the PAI cases closed in the Yuma office are handled by a part-time volunteer attorney. This volunteer comes into the office one day a week to meet with clients and has access to CLS' PIKA system. The attorney's cases are overseen in the same manner as staff cases. Interviews evidenced that CLS has taken steps to ensure that the attorney's access to CLS' PIKA system does not create conflict of interests for past or current clients, as the only legal work the volunteer attorney has done in Arizona has been exclusively with CLS.

Case closure: Upon following up with the PAI attorney to ascertain case closure status, the *Pro Bono* Coordinator asks the attorney handling the case to send the client a closing letter and subsequently confirms this was done by obtaining confirmation from the attorney. The Coordinator also closes the case in both the physical case file and in PIKA, utilizing a closing code that corresponds to the level of service provided by the PAI attorney.

Oversight: Interviews and case review indicated that the Yuma office has sufficient case management practices in place to oversee the few PAI cases it manages. Specifically, when on the rare occasions a case is placed with a *pro bono* attorney, the *Pro Bono* Coordinator asks the attorney handling the case to ask how long they anticipate the case will take, and follows up with them at the end of that time. Once the case has been closed, the *Pro Bono* Coordinator asks the attorney handling the case to send the client a closing letter, confirms this was done, and oversees the closing of the case in Yuma's files and the PIKA system.

Kingman Office PAI Review

Intake Process: The intake screening process for a Kingman PAI case is no different than it is for a staff case. Cases that are suitable to be handled by a PAI attorney are identified in weekly staff meetings after the initial intake screening has been conducted. The Kingman office has one (1) PAI staff member who has the title of *Pro Bono* Coordinator, who is not an attorney. The *Pro Bono* Coordinator is supervised by a Managing Attorney located in the same office.

Referrals: After determining PAI suitability, the *Pro Bono* Coordinator will then obtain the applicant's consent to refer the case to a volunteer attorney and will attempt to refer the case by telephone to a private attorney that has previously expressed interest in handling cases similar to the applicant's. Once the attorney has run a conflict check and accepts the case, the Coordinator will telephone the client to inform them of case acceptance. She then will send two (2) letters: the first being a referral letter to the attorney who accepted the case, along with the client's information, case information, initial consultation form, and final disposition form; the second being a letter to the client providing them with the name of and information on the attorney.

An interview with the *Pro Bono* Coordinator indicated that the Kingman office has between 20 to 30 PAI cases open at any one time. Additionally, they have had some success in recruiting local volunteer attorneys and do not use contract attorneys. The majority of the PAI cases in the Kingman office relate to bankruptcy, but some are family law or home ownership cases.

Case Closure: The *Pro Bono* Coordinator follows up with the private attorney to determine case closure. Once the attorney has indicated that the case can be closed, the coordinator logs the

number of hours the volunteer reports they spent on the case, sends the client a closing letter, and assigns a closing code based on the service provided by the private attorney.

Oversight: Interviews with the *Pro Bono* Coordinator indicated that the Kingman office has sufficient case management practices in place to oversee the PAI cases it manages. If the PAI attorney handling the case has not returned the initial consultation form several weeks after the case is referred, the Coordinator will follow up with them. They will also follow up with the attorney after the “estimated date of completion” indicated on the initial consultation form to determine the status of the case. Case review indicated that attorneys generally provide the Kingman office with very timely updates as to the status of the cases they accept. Kingman’s PAI cases are listed under the *Pro Bono* Coordinator’s name in PIKA and the Managing Attorney reviews them along with the Coordinator’s other open cases on an annual basis. Case review indicated that Kingman’s PAI case files are very organized and contain ample documentation as to the work done for the client.

PAI Case Review

Case review revealed cases that did not contain sufficient case status information. *See* Case No. 23-11-064058. The case notes indicated that this was an adult guardianship where the initial interview was conducted on May 2, 2011. At the staffing meeting, it was determined that this case warranted extensive service and the case was subsequently referred to a PAI attorney on June 20, 2011. Based on the lack of information regarding the legal assistance provided in the case file at the time of case review, it was suggested that the court docket be reviewed online via the court judiciary website. The intermediary agreed and also sent a request for status via email to the PAI attorney. During the course of the review, the attorney indicated that all work had been completed in October 2012. As a result of this information, the intermediary indicated that the case would be closed as of December 28, 2012. According to the CSR Handbook (2008 Ed., as amended 2011), § 10.4, regarding case oversight and follow-up, characteristics of effective oversight systems include a tickler system that reminds staff to generate periodic letter, telephone calls, or emails to private attorneys requesting status and/or closure updated. As a result of the sporadic oversight structure, VLP staff was unaware that this case had been completed in October. *See also* Case No. 23-11-063921. The case notes indicated that this was a bankruptcy matter where intake screening was conducted on April 14, 2011. The intermediary explained that there was no initial interview conducted because of the VLP’s familiarity with this applicant’s history. An effective tickler system would have resulted in the case file containing more recent case status information. *See also* Case No. 23-10-052680. The case notes indicated that this was a bankruptcy matter where intake screening was conducted on April 7, 2010. The initial interview was conducted on May 6, 2010, and the case subsequently referred to a PAI attorney on May 13, 2010. At the time of the review, the case file did not contain evidence of legal assistance provided by the PAI attorney. Due to a lack of noted activity in the case file, the intermediary obtained a case status update by logging into Public Access to Court Electronic Records (“PACER”). According to the activity noted in PACER, the bankruptcy was discharged on March 21, 2011. As a result, the intermediary indicated that the case would be closed as of December 28, 2012. If the VLP had in place a more structured oversight procedure, VLP staff would have known this case had been completed March 21, 2011.

Case review evidenced several case files that did not contain a citizenship attestation, or that contained an improperly executed citizenship attestation. *See* Case No. 23-11-065548. The case notes indicated that intake screening was done via telephone on June 17, 2011. The case was then referred to the VLP for extended representation and, according to the intermediary, on September 28, 2011, a citizenship attestation was emailed to the client for her signature. However, the VLP never obtained an executed citizenship attestation. VLP staff should have ensured that all necessary documentation was obtained prior to referring the case to a PAI attorney. *See also* Case No. 23-11-063921.¹³ The case notes indicated that this was a walk-in applicant where intake screening was conducted on April 14, 2011. The case was subsequently referred to the VLP and during case review, it was discovered that case file contained an undated citizenship attestation. Although the TAP screener should have ensured that the attestation was dated, pursuant to CSR Handbook (2008 Ed., as amended 2011), § 5.5, VLP also staff should have also caught this error during their review process prior to conducting further action on the case. *See also* Case No. 23-07-021019. The case notes indicated that this was a telephone applicant where intake screening was conducted on June 20, 2007. The case was subsequently referred to the VLP and during case review, it was discovered that the case file contained an undated citizenship attestation. Pursuant to CSR Handbook (2008 Ed., as amended 2011), § 5.5, and the explanation of VLP's referral procedures, staff should have caught this error during their review process. *See also* Case No. 23-09-046832. The case notes indicated that this was a telephone applicant where intake screening was done on September 4, 2009. The case was subsequently referred to the VLP and according to the case notes, in-person contact occurred for the initial interview, on October 27, 2009. However, the case file contained a citizenship attestation dated January 20, 2010, which was subsequent to the in-person contact. *See also* Case No. 23-06-013242. The case notes indicated that this was a telephone applicant where intake screening was done on October 23, 2006. The case was subsequently referred to the VLP where in-person contact occurred at the initial interview on November 6, 2007. While there was a letter in the case file asking the client to provide a signed citizenship attestation, there was no attestation in the file. VLP staff should have ensured that all necessary eligibility documentation was obtained prior to referring the case to a PAI attorney. *See also* Case No. 23-09-042295. The case notes indicated that intake screening was done on April 30, 2009 and the case was referred to the VLP on May 19, 2009. According to the case notes, the case was closed February 9, 2010, and assigned code "G," Negotiated Settlement With Litigation. According to the intermediary, the PAI attorney filed an Answer on the client's behalf in May 2009. The case was ultimately dismissed February 9, 2010; however, the citizenship attestation was dated February 4, 2010. VLP staff should have ensured that all necessary eligibility documentation was obtained prior to referring the case to a PAI attorney. *See also* Case No. 23-10-050851. The case notes indicated that this was a walk-in applicant who was screened on February 4, 2010. According to the case notes, the case was closed February 16, 2010, and assigned closing code "F," Negotiated Settlement Without Litigation. The case file did not contain a citizenship attestation. Although the TAP Unit should have obtained one during intake screening, VLP staff also should have also caught this error once the case during their review process.

PAI case review of housing cases referred from the central office to the Yavapai office revealed that PAI information that was required to be included in the file (*i.e.*, an applicant's participation in a VLP housing clinic) was not included in the file prior to forwarding the file to the branch

¹³ This case was also cited in the immediately preceding paragraph.

office for review and possible further representation by a CLS staff attorney. This resulted in some VLP housing cases being coded as PAI when there was no evidence of PAI work in the file. During the visit, it was recommended that the Executive Director look into the situation to determine if the information regarding the PAI attorney's legal advice was being kept in the intake division of the central office and was inadvertently not included in the file once it was transferred to a branch office. The Managing Attorney of the Yavapai office indicated that all cases closed in that office would be reviewed to ensure that only those cases with evidence of PAI provision of legal advice in the case file would be coded as PAI cases.

Recommendations and Required Corrective Actions:

Pursuant to the requirements of 45 CFR § 1614.3(e)(1)(i), the DR instructed CLS to allocate all PAI travel related costs as actual costs, and not on a percentage basis, and ensure that all administrative and support staff expenses related to PAI activities are allocated as PAI expenditures.

In its response to the DR, CLS stated that it agrees with this finding and will modify its procedures to ensure that the requirements of 45 CFR § 1614.3(e)(1)(i) are met.

The DR further instructed CLS to ensure that for any instance where legal advice and/or representation is being provided pursuant to a CLS sponsored PAI outreach activity, the recipient of the representation has been properly screened for citizenship/alien eligibility, as well as for compliance with any and all LSC regulations governing assistance provided with LSC and non-LSC funds, prior to receiving the advice and/or representation.

In its response to the DR, CLS stated that it will review its procedures to ensure that in "instances where legal advice and/or representation is being provided pursuant to a PAI outreach activity, the recipient has been screened and [is in compliance] with LSC regulations governing assistance prior to receiving the advice and or representation."

Pursuant to the documentation requirements of the CSR Handbook (2008 Ed., as amended 2011), § 10.5, the DR required CLS to ensure that every case that is closed as a PAI case contains the necessary documentation to verify client eligibility and identify the PAI assistance that was provided in the case.

In its response to the DR, CLS stated that it will ensure that every closed PAI case contains the documentation required by the CSR Handbook. In so doing, CLS indicated that it will conduct period reviews of case status reports on open and closed PAI cases to maintain effective case oversight.

The DR further recommended that CLS conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight.

In its response to the DR, CLS stated that it will conduct recurring reviews of case management reports, for both open and closed PAI cases, to ensure effective PAI case oversight.

Pursuant to the requirements of 45 CFR Part 1626, the DR recommended that CLS conduct PAI staff training to ensure that there is a written citizenship attestation, or evidence of timely review of alien eligibility documentation, in all files where a telephone applicant meets with a PAI attorney. This action will ensure that the corrective action required in Finding 5 will be accomplished.

In its response to the DR, CLS stated that it will provide training for PAI staff regarding the need to obtain a written citizenship attestation or evidence of timely review of alien eligibility documentation in all files when there is in-person contact between an applicant and a PAI attorney. This training will take place at the conference that is schedule to occur in August 2013.

Finding 18: CLS is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization. CLS' revised policy on subgrants is also in compliance with 45 CFR Part 1627.

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.¹⁴ Except that the definition does not include transfers related to 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 \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2).

All subgrants must be in writing and must be approved by LSC. In requesting approval, recipients are required to disclose the terms and conditions of the subgrant and the amount of funds to be transferred. Additionally, LSC approval is required for a substantial change in the work program of a subgrant, or an increase or decrease in funding of more than 10%. Minor changes of work program, or changes in funding less than 10% do not require LSC approval, but LSC must be notified in writing. *See* 45 CFR §§ 1627.3(a)(1) and (b)(3).

Subgrants may not be for a period longer than one year, and all funds remaining at the end of the grant period are considered part of the recipient's fund balance. All subgrants must provide for their orderly termination or suspension, and must provide for the same oversight rights for LSC with respect to subrecipients as apply to recipients. Recipients are responsible for ensuring that subrecipients comply with LSC's financial and audit requirements. It is also the responsibility of the recipient to ensure the proper expenditure of, accounting for, and audit of the transferred funds. *See* 45 CFR §§ 1627.3(b)(1), (b)(2), (c), and (e).

¹⁴ 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 attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, except that payment of membership fees or dues mandated by a governmental organization to engage in a profession is permitted. *See* 45 CFR § 1627.4. Nor may recipients may make contributions or gifts of LSC funds. *See* 45 CFR § 1627.5. Recipients must have written policies and procedures to guide staff in complying with 45 CFR Part 1627 and shall maintain records sufficient to document the recipient's compliance with 45 CFR Part 1627. *See* 45 CFR § 1627.8.

Review of accounting records and the detailed general ledger for the calendar years ending December 31, 2010 and December 31, 2011, indicated that CLS is in compliance with 45 CFR § 1627.4(a). Specifically, the mandatory State Bar of Arizona Professional dues were found to be charged to CLS' LSC account, and the non-mandated dues due to the National Legal Aid and Defender Association (NLADA), Arizona Housing Alliance, and American Bar Association dues were charged to a non-LSC account.

CLS' PAI program is based on the participation of volunteer attorneys, primarily in the VLP and Family Lawyers Assistance Project (FLAP). As a result, CLS makes few payments to attorneys. The largest single recipient of LSC funds in 2011 was for \$3,367.00, which was paid to an Arizona State University PhD who served as an expert witness. The individual witness provided CLS with a 50% discount on her hourly rate for her service in the case.

It was noted during the review that CLS maintained a contractual agreement for services with the William E Morris Institute for Justice (MIJ) in 2010, 2011, and 2012, in the amount of \$27,150.00 per year. The services to be provided by MIJ pursuant to the contract include, but are not limited to: providing CLS with staff training, responding to requests for assistance, legal research, and distributing information on legislative and regulatory developments. Examination of CLS' general ledgers for 2010, 2011, and 2012 indicated that the payments to MIJ were charged to Account XXXX.65 (Training-Unrestricted Funds), which is a non-LSC fund account. Inasmuch as these are non-LSC funds, this does not constitute a sub-recipient grant.

The policy provided for review in advance of the visit indicated that all membership dues were to be paid in accordance with LSC regulation. However, it did not provide the purpose, definitions, subgrant requirements, restrictions regarding contributions, or limitations when transferring funds to other recipients, pursuant to 45 CFR §§ 1627.1, 1627.2, 1627.3, 1627.4, 1627.5, 1627.6, and 1627.7. As such, it was recommended that the policy be revised to incorporate these components of the regulation. Pursuant to discussions with the Executive Director, the policy was revised in the weeks following the visit to incorporate the above-referenced changes. The revised policy was provided for review and was determined to be compliant with the requirements of 45 CFR Part 1627. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1627 policy once it had been approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS stated that it agrees with this finding and included a copy of the revised policy on subgrants, which was approved by the Board on May 1, 2013.

Finding 19: CLS is in substantial 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.

Review of CLS' timekeeping records revealed that CLS utilizes PIKA for timekeeping by all staff. As utilized, all compensated time is recorded. Advocates use PIKA to record time entries for all cases, matters, supporting activities, staff records, compensated time, leave, holidays, and other designated activities. The PIKA system is utilized as the basis for CLS' payroll. While the process is not documented in the CLS Accounting Manual, each staff member is required to generate a "Timesheet Report" from PIKA, sign the report certifying it as correct, and forward it to a supervisor for approval and submission to the Finance Payroll Office. Payroll is processed by outsourcing to an organization named Paychex, which utilizes their own checks or direct deposit to conduct payroll operations, manage payroll taxes and assessments, and create a draw on CLS' bank account.

A test of timekeeping/payroll was made by examination of the first pay period in December of 2010 and 2011. It was found that in all cases, the staff time recorded in the PIKA system equaled or exceeded the hours for which the employee was being paid. It was noted, however, that not all "Timesheet Reports" generated from PIKA included supervisory approval. The timesheets missing supervisory approval were found to be primarily managers. Additionally, not

all payroll general ledger journal entry reports were signed as “approved” by the Executive Director or designee.

A review was conducted of 15 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. The timekeeping review revealed that two (2) former CLS staff members did not include a summary of the work performed when entering the time worked on the case (*e.g.*, a time entry of 1.5 hours would have no description of the work performed). This situation did not appear to be systemic, as the remaining timekeeping check revealed that it is customary for CLS advocates to include a comprehensive summary of the work performed when entering the time spent on a case.

Recommendation:

The DR recommended that CLS conduct staff training to ensure that all Timesheet Reports generated from PIKA include approval from the employee’s supervisor and that all payroll general ledger journal entry reports are approved by the Executive Director or their designee. This action will ensure that the corrective action required in Finding 32 *infra* will be accomplished.

In its response to the DR, CLS stated that it agrees with this finding and has changed its procedures to ensure that “all timesheet reports are approved by the employees’ supervisor and that all payroll general ledger journal entry reports are reviewed and approved by the executive director or her designee.”

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 § 1642.3.¹⁵ However, with the enactment of LSC’s FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys’ fees was lifted. Thereafter, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys’ fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys’ fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys’ fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys’ fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹⁶

¹⁵ 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).

¹⁶ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys’ fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

A limited review of CLS fiscal records and the 2010 and 2011 AFSs evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by CLS that would violate 45 CFR Part 1642. As noted *supra*, review of CLS' accounting records revealed that CLS received awards for attorney's fees and cost reimbursement during the review period in a manner consistent with the requirements of 45 CFR §§ 1609.4 and 1609.5. The total attorney's fees receipts for 2010 included two (2) awards totaling \$1,350.00; the total for 2011 included eight (8) awards totaling \$23,585.00; and the total for 2012 included five (5) awards totaling \$6,500.00. All reviewed attorney's fees awards were properly allocated as derivative income to LSC funding and were received in a manner consistent with the requirements of 45 CFR Part 1609 and 45 CFR Part 1642.

The sampled files reviewed did not contain a prayer for attorneys' fees, as such CLS is in compliance with the requirements of 45 CFR Part 1642. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies, further collaborated this finding.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities). CLS' revised policy is in compliance with the requirements of 45 CFR Part 1612. A videotape available in a CLS branch office contains content that appears inconsistent with the requirements of 45 CFR § 1612.7(a)(2).

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.

A listing was obtained of CLS employees who performed permissible legislative activities during the time period of January 1, 2010 through November 30, 2012. From that list, a sample was selected of employees who engaged in legislative activities. The sample employees' time records for the time they were engaged in legislative activities were compared against the employees' hours worked to determine if the employees were paid with LSC funds. Review of the selected sample revealed that the employees were paid with non-LSC funds for their time spent on legislative activities. Based upon review of all relevant materials, it appears that CLS is in compliance with 45 CFR Part 1612.

CLS has established a written policy defining prohibited and permissible administrative and legislative advocacy. The established policy defines the authorization process and directs that only non-LSC funds may be used in connection with any authorized activity. Pursuant to the policy, the advocate responding to a request generated pursuant to the requirements of 45 CFR § 1612.6(a) is required to keep a record of the time spent on the activity and report time spent on the request, submitting the time along with copies of any written responses. An examination of this process found that authorized staff properly accounted for their time by indicating an Activity Code of “N03” in their PIKA time entry. A test of the PIKA system for the seven (7) days of January, 2012, for which activity was reported on the CLS Semi-Annual Report on Legislative and Rulemaking Activities, showed that three (3) employees reported a total of 12.8 hours and inputted Activity Code N03 (Non-LSC), which reflected a funding code “I-IOLTA”.

While the program has processes to approve and track staff time for permissible Part 1612 activity, through the CLS Part 1612 Approval File and the PIKA system, neither the CLS Accounting Manual nor CLS’ policy on legislative and administrative advocacy provide for the documenting of other direct costs such as travel expense, or indirect costs which may be appropriate, and the recording these on a cost/funding basis. As it was relayed by CLS staff, 45 CFR Part 1612 costs are separately supported by tracking the time entered into PIKA by CLS staff under a non-case activity code, and then separating out the time and costs relating to 45 CFR Part 1612 activities, based on the time entry description. Documenting 45 CFR Part 1612 direct and indirect costs and recording them on a cost/funding basis would require the conversion of employee time to an actual cost, based on the employee’s salary scales.

In the DR, OCE recommended that CLS consider establishing 45 CFR Part 1612 activity as a separate activity code in the chart of accounts. In so doing, entry of the code as the default fund for Part 1612 activities established in PIKA, and using the code on travel vouchers that request Part 1612 expense reimbursement, would more easily allow CLS’ accounting system to generate the necessary documentation to comply with this requirement. OCE also recommended that whatever process CLS chooses to utilize in order to comply with the requirements of 45 CFR § 1612.10(b) should be fully documented in the CLS Accounting Manual and relevant CLS Policies.

The CLS policy on legislative and administrative advocacy that was provided for review in advance of the onsite visit did not include definitions of the pertinent terms used throughout the regulation, or identify the purpose to be achieved by the policy, pursuant to 45 CFR §§ 1612.1 and 1612.2. The policy also did not list all of the prohibited legislative and administrative activities, as enumerated in 45 CFR § 1612.3, and did state all of the requirements relating correspondence generated in response to permissible, non-LSC funded activities, in accordance with 45 CFR § 1612.6. Review of the policy provided during the visit revealed that it did not list all of the permissible activities, as shown in 45 CFR § 1612.5, or contain a section addressing grassroots lobbying, training, organizing or recordkeeping, pursuant to 45 CFR §§ 1612.4, 1612.8, 1612.9, and 1612.10. Pursuant to discussions with the Executive Director, the policy was revised in the weeks following the visit to incorporate all of the above-referenced recommendations. The revised policy was reviewed and determined to be in compliance with the requirements of 45 CFR Part 1612. The revised policy was scheduled to be approved by the

Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1612 policy once it has been approved by its Board.

In its response to the DR, CLS included a copy of the revised legislative and administrative activities policy, which was approved by the Board on May 1, 2013.

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorney, and review of the recipient's policies and fiscal records, further collaborated this finding.

Review of the flyers, brochures, and other promotional materials made available to CLS clients revealed a videotape available in the lobby of the San Luis branch office entitled "UVAS NO." "UVAS NO" has a copyright date of 1992 and, pursuant to the copyright information on the videotape, is a production of the United Farm Workers of America, AFL-CIO. This videotape exhorts viewers to boycott the grapes of two companies. In accordance with the requirements of 45 CFR Part 1612, recipients are prohibited, during working hours and while providing legal assistance or representation, or while using resources provided by LSC or private entities, from encouraging, directing, or coercing others to engage in boycotts. *See* 45 CFR § 1612.7(a)(2); *see also* Section 504(a)(12), Pub.L. 104-134 (1996) and 45 CFR § 1612.8(a)(2). As such, in the DR, OCE required that this videotape be removed from the lobby of the San Luis office and should not be offered for distribution in any CLS office.

Recommendations and Required Corrective Action:

The DR instructed CLS to ensure removal of the videotape "UVAS NO" from the lobby of all CLS offices, as well as ensure that this videotape is not offered for distribution or display to applicants and/or clients in any CLS office.

In its response to the DR, CLS stated that it agrees with this finding and has removed the videotape "UVAS NO" from the lobby of all offices, as well as taken steps to ensure that "it is not offered for distribution to applicants and/or clients in any CLS office."

The DR recommended that CLS implement a system regarding the documentation of direct and indirect costs relating to 45 CFR Part 1612 activities, and the recordation of these costs on a cost/funding basis.

The DR further recommended that CLS consider establishing permissible 45 CFR Part 1612 activity as a separate activity code in its chart of accounts. Utilization of a separate activity code for permissible 45 CFR Part 1612 activities in the PIKA case management system, and on travel vouchers claiming 45 CFR Part 1612 expense reimbursement, will allow CLS' accounting system to more easily provide the necessary documentation to comply with this requirement. Should this recommendation be implemented, the procedure should be fully documented in the CLS' Accounting Manual. This action will ensure that the corrective action required in Finding 32 will be accomplished.

In its response to these two (2) recommendations, CLS stated that it is in the process of implementing procedures regarding documentation of direct and indirect costs for 45 CFR Part 1612 activities and “the recordation of those costs on a cost/funding basis” so that CLS’ accounting system will have the a better capability of providing the documentation necessary to show compliance with 45 CFR Part 1612. CLS also stated that the CLS Accounting Manual will be amended to reflect this change.

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 using LSC funds to provide legal assistance with respect to a criminal proceeding, or funds from any source to collaterally attack a criminal conviction. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient’s policies, also confirmed that CLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

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 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).¹⁷

None of the sampled files reviewed involved initiation or participation in a class action. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient’s policies and fiscal records, also confirmed that CLS is not involved in this prohibited activity.

¹⁷ 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).

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments. Additionally, CLS' response included a copy of the revised class action policy, which was approved by the Board on May 1, 2013.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting). CLS' revised policy is in compliance with the requirements of 45 CFR Part 1632.

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.

The CLS policy that was provided for review in advance of the visit did not provide a current definition for redistricting, pursuant to 45 CFR § 1632.2, and did not list all of the restrictions relating to redistricting actions, as identified in 45 CFR § 1632.3. This was discussed with the Executive Director and, pursuant to those discussions, the policy was revised in the weeks following the visit to incorporate all of the above-referenced recommendations. The revised policy was reviewed and determined to be in compliance with 45 CFR Part 1632. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1632 policy once it had been approved by its Board.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies and fiscal records, also confirmed that CLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

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

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.

The CLS policy that was provided for review in advance of the visit did not indicate that it is impermissible to represent any individual that has been charged with, or convicted of, manufacture of a controlled substance or possession with the intent to distribute a controlled substance, pursuant to 45 CFR § 1633.3(a). While onsite, the Executive Director was advised that the policy should be revised to reflect that prohibition. Pursuant to onsite discussions with the Executive Director, the policy was revised in the weeks following the visit to reflect the necessary change. The revised policy was reviewed and determined to be in compliance with 45 CFR Part 1633. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1633 policy once it has been approved by its Board.

None of the sampled files reviewed involved defense of any such eviction proceeding. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies, also confirmed that CLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments. Additionally, CLS' response included a copy of the revised policy on representation in certain eviction proceedings, which was approved by the Board on May 1, 2013.

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. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies also confirmed that CLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). CLS’ revised policy is in compliance with 45 CFR Part 1638.

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.¹⁸ This restriction has been contained in all subsequent appropriations acts.¹⁹ 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 CLS policy that was provided for review in advance of the visit did not list all of the permissible activities that do not violate the regulation, as outlined in 45 CFR § 1638.4. While onsite, the review team advised CLS that the policy should be revised to reflect all permissible activities. Pursuant to onsite discussions with the Executive Director, the policy was revised in the weeks after the visit to reflect the necessary change. The revised policy was reviewed and determined to be in compliance with the requirements of 45 CFR Part 1638. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the SR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1638 policy once it had been approved by its Board.

None of the sampled files, including documentation, such as community education materials and program literature, indicated program involvement in such activity. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient’s policies and fiscal records, also confirmed that CLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments. Additionally, CLS’ response included a copy of the revised policy on solicitation, which was approved by the Board on May 1, 2013.

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

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,

¹⁸ See Section 504(a)(18).

¹⁹ 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).

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. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies also confirmed that CLS is not involved in this prohibited activity.

The policy provided for review in advance of the visit did not identify the permissible activities that could be performed under the regulation, pursuant to 45 CFR § 1643.4. This was discussed with the Executive Director and it was recommended that the policy be revised to incorporate this necessary change. The policy was revised in the weeks following the visit to incorporate the necessary change. The revised policy was reviewed and determined to be compliant with the requirements of 45 CFR Part 1643. The revised policy is scheduled to be approved by the Board in May 2013, at the annual Board meeting. CLS should provide LSC with a copy of the revised 45 CFR Part 1643 policy once it has been approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments. Additionally, CLS' response included a copy of the revised policy, which was approved by the Board on May 1, 2013.

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. Sampled files reviewed, interviews with the Executive Director and three (3) Managing Attorneys, and review of the recipient's policies further evidenced and confirmed that CLS 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.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 30: CLS is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

During the compliance visit, the review team requested to see copies of signed written agreements wherein staff acknowledged, among other things, that they have read and are familiar with CLS' priorities and emergency case acceptance procedures. Pursuant to the request, the Executive Director provided copies of the statements signed by CLS staff, which were consistent with the requirements of 45 CFR § 1620.6. Additionally, interviews with the Executive Director evidenced that CLS is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, one (1) slight revision was recommended.

In accordance with 45 CFR Part 1644, recipients are directed to disclose certain information to the public and to LSC on cases filed in court by the recipient's attorneys. 45 CFR Part 1644 applies in the following instances:

- a. To actions filed on behalf of plaintiffs or petitioners who are clients of the recipient;
- b. Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient is not the attorney of record in the case below and the recipient's client is the appellant;
- c. To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and
- d. To cases filed pursuant to subgrants under 45 CFR Part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under 45 CFR Part 1614. *See* 45 CFR § 1644.3

The CLS policy on case disclosure that was provided for review in advance of the visit did not include the entire purpose of the regulation, as stated in 45 CFR § 1644.1; state the applicability of the regulation, as recited in 45 CFR § 1644.3; or enumerate all of the items to be provided in response to a valid request, pursuant to 45 CFR § 1644.4. While onsite, it was recommended that the policy be revised to incorporate all of the missing information. Pursuant to onsite discussions with the Executive Director, the policy was revised in the weeks following the visit to reflect the necessary changes.

The revised policy was reviewed and determined to be in compliance with the requirements of 45 CFR Part 1644. The revised policy was scheduled to be approved by the Board in May 2013, at the annual Board meeting. In the DR, CLS was asked to provide LSC with a copy of the revised 45 CFR Part 1644 policy once it has been approved by its Board.

There are no recommendations or corrective actions required.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments. Additionally, CLS' response included a copy of the revised case disclosure policy, which was approved by the Board on May 1, 2013.

Finding 32: The Community Legal Services Accounting Manual and Program Policies and Procedures relating to fiscal operations require updating to reflect current significant fiscal processes and controls needed to meet the requirements of LSC Grant Assurances, LSC Regulations, and the Accounting Guide for LSC Recipients (2010 Ed.).

Recipients are required to establish and maintain adequate accounting records and fiscal control procedures, pursuant to the Accounting Guide for LSC Recipients (2010 Ed.), § 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. Additionally, each recipient's governing body has a fiduciary responsibility to the program and is responsible for reviewing and approving accounting and control policies and makes recommendations for changes and improvements. LSC promulgates regulations that govern recipients' use of Corporation funds. These regulations appear in 45 CFR Part 1600, et

seq. 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 Letter 12-2 also advises programs of fiscal internal control issues requiring corrective action which have been determined in the course of recent onsite reviews.

Standards governing allowability of costs under Corporation grants or contracts

Pursuant to 45 CFR § 1630.3(f), when “a recipient has only one major function, such as the delivery of legal services to low-income clients, allocation of indirect costs may be achieved by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly.” Further, “[t]he distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.” *See* 45 CFR § 1630.3(f).

The CLS Accounting Manual incorporates a Cost Allocation Plan that defines cost allocations to grant funds as both direct and indirect. Indirect costs are those that share a common or joint objective and cannot be readily identified with a specific grant. The CLS Cost Allocation Plan sufficiently allows for multiple methods of indirect allocation including: allocation by occupancy space using a square footage process, which is accomplished by dividing the space occupied for the grant activities by the total occupancy cost, and allocating that amount to the grant and allocated cost to a grant based on cases associated with a city to total cases to arrive at a cost.

The CLS Accounting Manual was found to adequately define most required accounting and control policies, however the following deficiencies were noted:

Accounting for attorneys’ fees

The onsite review revealed that CLS has an Accounting Manual supplemented by Program Policy Statements and Collective Bargaining Agreements with staff. However, it was found that CLS’ Program Policy Statements were, in some cases, outdated or transitional. For example, CLS was found to be receiving legal fees and cost reimbursement as appropriate under 45 CFR Part 1609, Fee Generating Cases, and LSC Program Letters 9-3 and 10-1. However, the provided CLS written policy was outdated, reflecting only a prohibition against claiming attorneys’ fees subsequent to April 26, 1996. It was determined that the policy had been informally supplemented by training or employee orientation material which indicated that, as of December 16, 2009, attorneys could seek and obtain attorneys’ fees. It was noted during the review that neither the written policy nor the CLS Accounting Manual incorporated processes to ensure the requirements of 45 CFR § 1609.4, Accounting for and Use of Attorneys’ Fees, was met.

Expenditure of funds for legislative and rulemaking

Under 45 CFR §1612.10(b), recipients of LSC funds are required to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activity. While the program has processes to approve, track and report such activity (through the CLS 45 CFR

Part 1612 approval file and PIKA), neither the CLS Accounting Manual nor CLS' policy on administrative and legislative advocacy define a record system by which CLS accounts for the approved, non-LSC costs under 45 CFR Part 1612 activities.

Accounting for Derivative Income; Accounting Guide for LSC Recipients (2010 Ed.), § 2-2.7, Derivative Income

LSC considers derivative income as any additional income derived from an LSC grant, such as interest income, rent or the like, or any portion of a reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets, or other compensation or income attributable to any Corporation grant. Income derived from publications and fundraising is not considered LSC derivative income. LSC derivative income must be reported in the same class of net assets that includes the LSC grant.

Pursuant to 45 CFR § 1630.12(a), "derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity." In accordance with 45 CFR § 1630.12(b), "derivative income that is allocated to the LSC fund in accordance with paragraph 45 CFR § 1630.12(a) is subject to the provisions of 45 CFR Part 1630, including the requirement of 45 CFR 1630.3(a)(4), which provides that expenditures of such funds be in compliance with the LSC Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC recipients, the terms and conditions of the grant or contract, and other applicable law."

The CLS Accounting Manual has a Cash Receipts section; however, it does not contain any policies or procedures relating to the allocation of derivative income. Such income can be derived from items such as interest income or income from functional activities supported by LSC funding (e.g., litigation, clinics, trainings, etc.), and must be recorded as derivative income. Review of CLS' fiscal records revealed that CLS appropriately designated attorney fee income from 2010 through 2012, totaling \$31,435.50, as LSC derivative income; it was also found that interest income totaling \$6,385.49 had been appropriately attributed to LSC as derivative income within the review period. However, neither CLS' policy on attorneys' fees, nor the CLS Accounting Manual, addresses the proper allocation of derivative income.

Timekeeping

Under 45 CFR Part 1635, time records must be "created contemporaneously and account for time 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[.]" The Accounting Guide for LSC Recipients (2010 Ed.), § 3.5.5, Payroll, requires time and attendance records to be maintained for each employee and to be approved by the employees supervisor. It was noted that the CLS timekeeping policy was outdated and did not reflect that all program timekeeping is currently maintained electronically in PIKA, rather than the paper forms referenced.

Required Corrective Action:

The DR directed CLS to ensure that the CLS Accounting Manual was revised to reflect compliance with the requirements of: 45 CFR § 1609.4 (accounting for and use of attorneys' fees); 45 CFR § 1612.10(b) (describing a system to account for all non-LSC costs expended for approved 45 CFR Part 1612 activities); 45 CFR § 1630.12 (identifying the allocation procedure of derivative income); and 45 CFR Part 1635 (reflecting the current timekeeping methodology).

In its response to the DR, CLS stated that it agrees with this finding and has revised its Accounting Manual to "reflect compliance with the requirements of 45 CFR § 1609.4; 45 CFR § 1612.10(b); 45 CFR Part 1612; 45 CFR § 1630.12 and 45 CFR [Part] 163[5]."

As noted *supra*, CLS' response indicated that it is in the process of implementing procedures and revising its Accounting Manual regarding documentation of direct and indirect costs for 45 CFR Part 1612 activities and "the recordation of those costs on a cost/funding basis" so that CLS' accounting system will have the a better capability of providing the documentation necessary to show compliance with 45 CFR Part 1612.

Also noted *supra*, in its response to the DR, CLS stated that it has changed its procedures to ensure that "all timesheet reports are approved by the employees' supervisor and that all payroll general ledger journal entry reports are reviewed and approved by the executive director or her designee."

Finding 33: A limited review of CLS' internal control policies and procedures demonstrated that the policies and procedures compare favorably to Chapter 3, The Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System, of LSC's Accounting Guide for LSC Recipients (2010 Ed.) and LSC Program Letter 10-2.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Ed.), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

The Accounting Guide for LSC Recipient provides guidance on all aspects of fiscal operations and the 2010 edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur.

Review of the Internal Control Worksheet, along with interviews with, and observations of, management and support staff, disclosed that CLS has adequate segregation of duties. The following persons were interviewed during the review regarding segregation of duties: the Executive Director; the Finance and Information Systems Director; the Financial Assistant/Grant Manager; and the Finance Assistant. Additionally, review of the November and December 2012 Bank Reconciliations disclosed timely preparation, review, and approval.

The procedure employed by CLS to ensure proper segregation of duties, with regards to receiving and reconciling bank statements, and receiving and depositing cash and checks, was described as follows: The Special Assistant to the Executive Director stamps the bank statements as “received” and then forwards the statements to the Executive Director for review. The Finance and Information Systems Director reconciles the bank accounts and forwards the reconciliation to the Executive Director for review and approval. The Special Assistant also opens all mail, logs in cash received, prepares pre-numbered receipts, and endorses the checks. Another CLS staff member prepares and takes deposits to the bank. Lastly, a separate CLS staff member posts all receipts to the general ledger. The review team found the segregation of duties, for these tasks as well as overall segregation of duties, to be adequate.

There are no recommendations or corrective actions required at this time.

In its response to the DR, CLS indicated that it agrees with this finding and has no comments.

Finding 34: Review of CLS’ credit card payments reviewed for the months of June 2011 and 2012 disclosed that the majority of payments were appropriately reviewed, and approved. However, there were four (4) charges lacking supporting documentation at the time the charges were initially reviewed.

CLS’ credit card payments were reviewed for the months of June 2011 and 2012. The review disclosed that a majority of the supporting documentation of the payments reviewed were attached to the check voucher with a corresponding notation indicating the purpose of the charge. However, the following list is a sample of four (4) payments made by CLS that lacked the required corresponding supporting documentation, as required by the Accounting Guide for LSC Recipients(2010 Ed.), §3-5.4(c) and CLS’ Corporate Credit Card Policy:

- Check number XXX178 dated June 11, 2012, for the amount of \$35.71;
- Check number XXX173 dated June 11, 2012, for the amount of \$1,981.63. The charges without supporting documentations or explanation were for the amounts of \$49.95 and \$39.00;

- Check number XXX172 dated June 11, 2012, for the amount of \$3,798.46. The charges without supporting documentation or explanation were for the amounts of \$510.15, \$680.20, and \$794.32 paid to the Hyatt Regency of Jacksonville, Florida. Supporting documentation was later provided and the charges were deemed to be expended for a PAI conference attended by CLS PAI attorneys; and
- Check number XXX636 dated June 10, 2011, for the amount of \$47.68.

Required Corrective Action:

The DR instructed CLS to take corrective action and enforce the requirements of the Accounting Guide for LSC Recipients(2010 Edition), § 3-5.4(c) and its own Corporate Credit Card policy that mandates the following:

Employees shall retain and provide to the Finance Office receipts or other documentation of expenditures made on the CLS credit card by the last business day of the month in which the credit card statement is received. Each receipt shall bear a notation to identify the expense and enable CLS personnel to determine that the expense was related to CLS business.

CLS may take disciplinary action against any employee who intentionally or negligently violates the foregoing policy. CLS shall seek reimbursements for any expenditures on the CLS account that are not incurred in connection with CLS business, are patently unreasonable or for which adequate documentation is lacking.

In its response to the DR, CLS stated that it agrees with this finding and “has taken steps to ensure compliance with the Accounting Guide for LSC recipients and our Corporate Card policy which will require employees to face disciplinary actions who intentionally or negligently violates the policy.” CLS’ response further indicated that it will seek reimbursement for any charge to CLS funds that are not incurred in relation to CLS business, or that lack sufficient documentation.

IV. RECOMMENDATIONS²⁰

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

1. Pursuant to the requirements of 45 CFR § 1611.7(a)(1), CLS ensure that all computerized and manual intake forms, along with CLS' PIKA system, properly screen for an applicant's reasonable income prospects.
2. Pursuant to the requirements of 45 CFR § 1611.7(a)(1), CLS conduct intake staff training regarding screening all applicants for reasonable income prospects.

In its response to the DR regarding Recommendation Nos. 1 and 2, CLS stated that its manual intake form has been revised to include a question regarding an applicant's prospective income, and that intake staff have been instructed on how to properly inquire and ascertain an applicant's income prospects. A copy of the revised intake form, which was included in the response, now contains a question regarding an applicant's prospective income, and CLS' PIKA has been modified to include a prospective income field. CLS further stated that more training will be provided to all CLS staff regarding this requirement at the conference scheduled to take place in August 2013.

3. CLS revise all manual intake applications, as well as CLS' PIKA system, to reflect only those over-income factors that are listed in 45 CFR § 1611.5(a)(4)(ii), and include only those assets meeting the definition contained in 45 CFR § 1611.2.

In its response to the DR, CLS asserted that both the manual intake form and CLS' PIKA have been changed to reflect that only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii) and only those assets meeting the definition contained in 45 CFR § 1611.2 would be considered during the financial eligibility screening process. CLS also attached copies of the revised TAP intake form and its PIKA menu of factors, which lists "unreimbursed medical expenses" as applicable factors. CLS further indicated that it has revised its manual intake form and financial eligibility policy to meet the requirements of 45 CFR § 1611.2(d). The response also included a copy of CLS' revised intake application, which authorizes the inclusion of stocks and bonds to the extent that they are actually and readily available to the application. The response further indicated that intake screeners are now provided with instructions regarding how to determine asset eligibility. CLS also stated that it plans to provide training to all staff regarding the newly revised CLS financial eligibility policy during a conference scheduled to take place August 22-23, 2013.

²⁰ 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.

4. Pursuant to the requirements of 45 CFR Part 1626, CLS conduct intake staff training to ensure that every walk-in applicant is appropriately and timely screened and a written citizenship attestation, or evidence of timely review of alien eligibility documentation, is obtained for all walk-in applicants when applicable. This action will ensure that the corrective action required in Finding 5 *supra* will be accomplished.

In response to the DR, CLS indicated that it has taken corrective action to ensure that it obtains properly executed written citizenship attestations or verifications of alien eligibility. CLS further indicated that every office will be required to obtain attestations or verifications when an applicant first makes in-person contact with any CLS staff. CLS also included a copy of the revised citizenship eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff conference scheduled to take place in August 2013.

5. For program-wide consistency in intake screening procedures, CLS should utilize one (1) intake application for program-wide use.

In its response to the DR, CLS stated that it has developed a program-wide manual intake form to be used in all offices; included in its response was the program-wide form. Additionally, CLS indicated that all staff would receive training on the form at the staff conference in August 2013.

6. CLS review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case file, when required, and contain a detailed scope and subject matter of the representation.

In its response to the DR, CLS stated that it agrees with this finding and will “review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case files, when required, and contain appropriate details as to the scope and subject matter of representation.”

7. CLS review all case files prior to file closing to ensure that the legal assistance provided is properly documented. Case files lacking documented legal assistance should not be reported to LSC during the CSR data submission.

In its response to the DR, CLS stated that it agrees with this finding and will review all case files prior to case closure to ensure proper documentation of legal assistance. CLS further indicated that cases lacking proper documentation will not be reported to LSC in its CSR data submission.

8. CLS conduct staff training to ensure proper application of the CSR case closure categories, specifically with respect to utilization of closing code “K,” Other.

In its response to the DR, CLS stated that it has taken action to ensure proper application of the CSR case closure codes. Specifically, the response stated that the matter was

discussed with CLS managing attorneys in the monthly meetings that have taken place since the compliance visit and the case closure procedure has been revised to require that all cases be reviewed by a managing attorney, prior to case closure, to ensure that the proper closing code is selected. Additionally, CLS indicated that all staff will receive training regarding this requirement at the conference scheduled to take place in August 2013.

9. CLS conduct periodic reviews of case management reports on open and closed cases, particularly those limited service files that remain open for an extended period of time, to ensure against dormancy and the reporting of untimely closed cases.

In its response to the DR, CLS indicated that it agrees with this finding and will “conduct periodic review of case management reports on open and closed cases, particularly those limited service files that remain open for an extended period of time, to ensure against dormancy and the reporting of untimely closed cases.”

10. CLS conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight.

In its response to the DR, CLS stated that it will conduct recurring reviews of case management reports, for both open and closed PAI cases, to ensure effective PAI case oversight.

11. Pursuant to the requirements of 45 CFR Part 1626, CLS conduct PAI staff training to ensure that there is a written citizenship attestation, or evidence of timely review of alien eligibility documentation, in all files where a telephone applicant meets with a PAI attorney. This action will ensure that the corrective action required in Finding 5 will be accomplished.

In its response to the DR, CLS stated that it will provide training for PAI staff regarding the need to obtain a written citizenship attestation or evidence of timely review of alien eligibility documentation in all files when there is in-person contact between an applicant and a PAI attorney. This training will take place at the conference that is scheduled to occur in August 2013.

12. CLS conduct staff training to ensure that all Timesheet Reports generated from PIKA include approval from the employee’s supervisor, and that all payroll general ledger journal entry reports are approved by the Executive Director or their designee. This action will ensure that the corrective action required in Finding 32 will be accomplished.

In its response to the DR, CLS stated that it agrees with this finding and has changed its procedures to ensure that “all timesheet reports are approved by the employees’ supervisor and that all payroll general ledger journal entry reports are reviewed and approved by the executive director or her designee.”

13. CLS implement a system regarding the documentation of direct and indirect costs relating to 45 CFR Part 1612 activities, and the recordation of these costs on a cost/funding basis.

14. CLS consider establishing permissible 45 CFR Part 1612 activity as a separate activity code in its chart of accounts. Utilization of a separate activity code for permissible 45 CFR Part 1612 activities in PIKA, and on travel vouchers claiming 45 CFR Part 1612 expense reimbursement, will allow CLS' accounting system to more easily generate the necessary documentation to comply with this requirement. Should this recommendation be implemented, the procedure should be fully documented in the CLS' Accounting Manual. This action will ensure that the corrective action required in Finding 32 will be accomplished.

In its response to Recommendation Nos. 13 and 14, CLS stated that it is in the process of implementing procedures regarding documentation of direct and indirect costs for 45 CFR Part 1612 activities and "the recordation of those costs on a cost/funding basis" so that CLS' accounting system will have the a better capability of providing the documentation necessary to show compliance with 45 CFR Part 1612. CLS also stated that the CLS Accounting Manual will be amended to reflect this change.

In its response to the DR, CLS also indicated that it "accepts and plans to implement the recommendations listed and outlined in [its] response to each of the findings."

V. REQUIRED CORRECTIVE ACTIONS

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

1. Pursuant to the requirements of 45 CFR Part 1611, ensure that only those over-income factors listed in 45 CFR § 1611.5(a)(4)(ii) and only those assets meeting the definition contained in 45 CFR § 1611.2, are considered during the eligibility determination process.

In its response to the DR, CLS asserted that both the manual intake form and CLS' PIKA have been changed to reflect that only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii) and only those assets meeting the definition contained in 45 CFR § 1611.2 would be considered during the financial eligibility screening process. CLS also attached copies of the revised TAP intake form and its PIKA menu of factors, which lists "unreimbursed medical expenses" as an applicable factor, and contains only those over-income factors enumerated in 45 CFR § 1611.5(a)(4)(ii). CLS further indicated that it has revised its manual intake form and financial eligibility policy to meet the requirements of 45 CFR § 1611.2(d). The response included a copy of CLS' revised intake application, which authorizes the inclusion of stocks and bonds to the extent that they are actually and readily available to the application. The response further indicated that intake screeners have been provided with instructions regarding how to determine asset eligibility. CLS stated that it plans to provide training to all staff regarding the newly revised CLS financial eligibility policy during a conference scheduled to take place August 22-23, 2013.

In order to close out this Required Corrective Action, please provide the agenda for the training scheduled to take place on August 22-23, 2013 concerning this requirement, after the training has taken place but, on or before September 1, 2013.

2. Ensure consistent application, program-wide, of its newly revised financial eligibility policy to ensure that the requirements of 45 CFR Part 1611 are met, specifically with respect to verifying, documenting, and applying over-income authorized exceptions.

In its response to the DR, CLS stated that it agrees with this finding and has made the recommended changes to its financial eligibility policy to "ensure consistent application, program-wide, of our newly revised financial eligibility policy," with respect to verifying, documenting and applying over-income authorized exceptions and "verifying, documenting, and applying exempt assets, and asset limit waivers." CLS also included a copy of the revised financial eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

In order to close out this Required Corrective Action, please provide the agenda for the training scheduled to take place on August 22-23, 2013 concerning this requirement, after the training has taken place but, on or before September 1, 2013.

3. Ensure that all case files contain timely and properly executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, where appropriate.

In response to the DR, CLS indicated that it has taken corrective action to ensure that it obtains properly executed written citizenship attestations or verifications of alien eligibility for all cases, where applicable. CLS further indicated that every office will be required to obtain attestations or verifications when an applicant first makes contact with any CLS staff. CLS also included a copy of the revised citizenship eligibility policy, which was approved by the Board on May 1, 2013, in its response, and stated that all staff will be provided training on the revised policy at the staff meeting scheduled to take place in August 2013.

In order to close out this Required Corrective Action, please provide the agenda for the training scheduled to take place on August 22-23, 2013 concerning this requirement, after the training has taken place but, on or before September 1, 2013.

4. Ensure proper application of the CSR case closure code categories.

In its response to the DR, CLS stated that it has taken action to ensure proper application of the CSR case closure codes. Specifically, the response stated that the matter was discussed with CLS managing attorneys in the monthly meetings that have taken place since the compliance visit and the case closure procedure has been revised to require that all cases be reviewed by a managing attorney, prior to case closure, to ensure that the proper closing code is selected. Additionally, CLS indicated that all staff will receive training regarding this requirement at the conference scheduled to take place in August 2013.

In order to close out this Required Corrective Action, please provide the agenda for the training scheduled to take place on August 22-23, 2013 concerning this requirement, after the training has taken place but, on or before September 1, 2013.

5. Pursuant to the requirements of 45 CFR § 1614.3(e)(1)(i), allocate all PAI travel related costs as actual costs, and not on a percentage basis, and ensure that all administrative and support staff expenses related to PAI activities are allocated as PAI expenditures.

In its response to the DR, CLS stated that it agrees with this finding and will modify its procedures to ensure that the requirements of 45 CFR § 1614.3(e)(1)(i) are met.

In order to close out this Required Corrective Action, please provide a written copy of the modification to CLS' procedures with regard to ensuring compliance with 45 CFR § 1614.3(e)(1)(i) on or before September 1, 2013.

6. Ensure that for any instance where legal advice and/or representation is being provided pursuant to a CLS sponsored PAI outreach activity, the recipient of the representation has

been properly screened for citizenship/alien eligibility, as well as for compliance with any and all LSC regulations governing assistance provided with LSC and non-LSC funds, prior to receiving the advice and/or representation.

In its response to the DR, CLS stated that it will review its procedures to ensure that in “instances where legal advice and/or representation is being provided pursuant to a PAI outreach activity, the recipient has been screened and [is in compliance] with LSC regulations governing assistance prior to receiving the advice and or representation.”

In order to close out this Required Corrective Action, please provide a written copy of CLS’ PAI outreach procedures reflecting instructions for all PAI staff to screen all recipients of legal assistance for compliance with LSC regulations governing assistance prior to receiving the advice and/or representation on or before September 1, 2013.

7. Pursuant to the documentation requirements of the CSR Handbook (2008 Ed., as amended 2011), § 10.5, ensure that every case that is closed as a PAI case contains the necessary documentation to verify client eligibility and identify the PAI assistance that was provided in the case.

In its response to the DR, CLS stated that it will ensure that every closed PAI case contains the documentation required by the CSR Handbook. In so doing, CLS indicated that it will conduct period reviews of case status reports on open and closed PAI cases to maintain effective case oversight.

In order to close out this Required Corrective Action, if this is to be discussed at the all-staff meeting scheduled to take place on August 22-23, 2013, please provide the agenda concerning this requirement, after the training has taken place but, on or before September 1, 2013. Alternatively, if new procedures have been developed and implemented, those procedures should be provided on or before September 1, 2013.

8. Ensure removal of the videotape “UVAS NO” from the lobby of all CLS offices, as well as ensure that this videotape is not offered for distribution to applicants and/or clients in any CLS office.

In its response to the DR, CLS stated that it agrees with this finding and has removed the videotape “UVAS NO” from the lobby of all offices, as well as taken steps to ensure that “it is not offered for distribution to applicants and/or clients in any CLS office.”

This Required Corrective Action has been satisfactorily addressed and is therefore closed. As such, the videotape entitled “UVAS NO,” which was obtained during the compliance visit, is being returned to CLS with this Report.

9. Ensure that the CLS Accounting Manual is revised to reflect compliance with the requirements of: 45 CFR §1609.4 (Accounting for and Use of Attorneys’ Fees); 45 CFR § 1612.10(b) (accounting for all non-LSC costs expended for approved 45 CFR Part 1612 activities); 45 CFR § 1630.12 (defining treatment of derivative income); and 45 CFR Part

1635 (reflecting the current timekeeping methodology).

In its response to the DR, CLS stated that it agrees with this finding and has revised its Accounting Manual to “reflect compliance with the requirements of 45 CFR § 1609.4; 45 CFR § 1612.10(b); 45 CFR Part 1612; 45 CFR § 1630.12 and 45 CFR [Part] 163[5].”

As noted *supra*, CLS’ response indicated that it is in the process of implementing procedures, and revising its Accounting Manual, regarding documentation of direct and indirect costs for 45 CFR Part 1612 activities, and “the recordation of those costs on a cost/funding basis” so that CLS’ accounting system will have the a better capability of providing the documentation necessary to show compliance with 45 CFR Part 1612.

Also noted *supra*, in its response to the DR, CLS stated that it has changed its procedures to ensure that “all timesheet reports are approved by the employees’ supervisor and that all payroll general ledger journal entry reports are reviewed and approved by the executive director or her designee.”

In order to close out this Required Corrective Action, please provide the above-referenced revised portions of CLS’ Accounting Manual evidencing compliance with the requirements of 45 CFR § 1609.4; 45 CFR § 1612.10(b); 45 CFR Part 1612; 45 CFR § 1630.12 and 45 CFR Part 1635 on or before September 1, 2013.

10. Ensure compliance with the requirements of the Accounting Guide for LSC Recipients § 3-5.4(c) (2010 Edition), and CLS’ own Corporate Credit Card policy, which mandates the following:

- Employees shall retain and provide to the Finance Office receipts or other documentation of expenditures made on the CLS credit card by the last business day of the month in which the credit card statement is received. Each receipt shall bear a notation to identify the expense and enable CLS personnel to determine that the expense was related to CLS business.
- CLS may take disciplinary action against any employee who intentionally or negligently violates the foregoing policy. CLS shall seek reimbursements for any expenditures on the CLS account that are not incurred in connection with CLS business, are patently unreasonable or for which adequate documentation is lacking.

In its response to the DR, CLS stated that it agrees with this finding and “has taken steps to ensure compliance with the Accounting Guide for LSC recipients and our Corporate Card policy which will require employees to face disciplinary actions who intentionally or negligently violates the policy.” CLS’ response further indicated that it will seek reimbursement for any charge to CLS funds that are not incurred in relation to CLS business, or that lack sufficient documentation.

In order to close out this Required Corrective Action, please provide the steps CLS has taken to ensure compliance with the Accounting Guide for LSC recipients and CLS' Corporate Card policy on or before September 1, 2013.

11. Provide a copy of all revised policies discussed in this Draft Report (45 CFR Parts 1611, 1626, 1636, 1620, 1604, 1609, 1627, 1612, 1632, 1633, 1638, 1643, and 1644) once they have been approved by CLS' Board, as well as evidence of Board approval.

In its response to the DR, CLS included copies of all revised policies, as well as evidence of Board approval, which was obtained on May 1, 2013.

This Required Corrective Action has been sufficiently addressed and is therefore closed.

The DR indicated that CLS' response should contain sufficient detail and documentation to evidence that each required corrective action has been completed. For any required corrective action still pending, CLS was requested to provide a detailed narrative and proposed timeline for completion.

In its response to the DR, CLS also indicated that it "agrees to take the corrective actions listed and outlined in [its] foregoing responses to each of the findings."

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COMMUNITY
LEGAL SERVICES, INC.
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~Est. 1952~

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VOLUNTEER LAWYERS PROGRAMS
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Mohave County - Kingman Office
Yavapai County - Prescott Office
Yuma/La Paz Counties - Yuma Office

June 21, 2013

Ms. Lora M. Rath, Director
Office of Compliance and Enforcement
3333 J. Street, NW, 3rd Floor
Washington, DC 20007-3522

Re: Community Legal Services Response to the Case Service Report/Case Management System Review Visit, Recipient No. 703030

Dear Ms. Rath:

Enclosed is Community Legal Services' response to the draft report for the on-site Case Service Report/Case Management System Review of Community Legal Services (CLS), which took place during the week of January 28, 2013.

Community Legal Services would like to commend the review team for the professional and courteous manner in which they interacted with our staff in conducting the review, and for their assistance in the comprehensive review of our policies and procedures.

Thank you for the extended opportunity to review and provide comments to LSC on the draft report. Please let us know if you have any questions or need additional information regarding your report or the enclosed response.

Sincerely,



Lillian O. Johnson

LOJ/amt
enclosures

June 21, 2013

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

CLS agrees with finding. No comments.

2. **Finding 2: CLS' intake procedures and case management system generally support CLS' compliance related requirements. However exceptions were noted with respect to documenting over-income factors and exempt assets, as well as screening for income prospects.**

Specific areas of compliance evaluated in regards to intake screening protocol

Financial Eligibility Screening 45 CFR Part 1611

45 CFR Part 1611 Income Eligibility Screening:

It is recommended that CLS modify the TAP Unit's manual intake form and PIKA as to the Medical expenses category so that it more accurately reflects 45 CFR § 1611.5(a) (4) (ii). The factor relating to medical expenses and medical insurance premiums as over-income exceptions; however, the application allows for "Medical Expenses/Gastos Medicos" to be considered as factors.

Both the manual intake form and the PIKA CMS have been changed to reflect Unreimbursed Medical Expenses and Medical Insurance Premiums. (See Attachments TAP Manual Application and PIKA Special Tables & Menus Intake Type)

In addition, onsite interviews with intake staff indicated that one (1) intake staff member believes that the income threshold for victims of domestic violence is 250% of the FPG. This appeared to arise from CLS previously having a non-LSC funding source that allowed for a victim of domestic violence to be provided with legal assistance as long as the victim's income was less than 250% of the FPG. Intake interviews indicated that this staff member would apply a spend-down using the earlier referenced permissible deductions in these types of cases. However, case review did not reveal any instances where the client was financially ineligible under LSC criteria and service was provided using LSC funds and/or reported to LSC for CSR purposes.

Please note that CLS continues to have a non-LSC funding source (CPIP) that allows victims of domestic violence to be provided with legal assistance as long as the victim's income is

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less than 250% of the FPG. Those applicants/clients whose gross income is between 200-250% of poverty are given a grant code of "V" and those cases are not reported to LSC.

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

CLS should revise its manual intake form so that it accurately reflects assets that meet the definition contained in 45 CFR § 1611.2(d). In doing so, the form should indicate how to determine whether an asset meets the definition contained in 45 CFR § 1611.2(d), by prescribing methods to determine actual availability (*i.e.* ascertaining and documenting any barriers to liquidation of an applicant's stocks, bonds, and/or CD's). To the extent that any revisions are made to the intake form, CLS should ensure that CLS staff is provided training on the revisions, with special attention directed to intake screeners in all offices, and that the CLS financial eligibility policy is consistent with the revisions.

CLS has revised its manual intake form, and eligibility policy to accurately reflect 45 CFR § 1611.2 (d) (1). CLS has provided instructions to its intake screeners on how to determine whether an asset meets the definition contained in the regulations. In addition, CLS plans to provide training to all staff regarding all of the newly revised and amended policies and procedures during the CLS Program-Wide Conference in August 22-23, 2013. (Attached are copies of TAP Manual Application and the Eligibility Policy).

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

The on-site observations indicated that CLS is not in compliance with 45 CFR § 1611.7(a) (1), as neither the onsite intake screening demonstrations nor the manual intake form to include a reasonable income prospect inquiry. CLS should revise its intake form to include reasonable income prospect screening. In addition, CLS should ensure that staff is provided training on how to apply 45 CFR § 1611.7(a) (1) during the intake screening process. Under 45 CFR § 1611.7(a) (1), and in accordance with LSC' OLA Advisory Opinion #AO-200901006, LSC recipients are required [to] make a reasonable inquiry into prospective income, and shall record and document this information. As such, and as explained above, CLS should add a prospective income field in its PIKA program so intake staff is sure to inquire about it and document it. All intake staff should be trained to inquire about prospective income.

Pursuant to the comments and recommendations provided by reviewers during the visit CLS has made changes to insure compliance with 45 CFR § 1611.7 (a) (1). CLS has changed its manual intake form to include a question inquiring about prospective income and has provided instructions to intake staff on how to make reasonable inquiry into prospective income. CLS is also adding a prospective income field to our case management system

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(PIKA). In addition, training will be provided to all staff to inquire about prospective income at the CLS All Staff Conference in August, 2013.

Review of Localized Intake Screening for the East Valley Office; the Yavapai Office; the Yuma Office; the Mohave Office; and the San Luis Office-it is strongly recommended the program use one manual intake form program-wide.

Per the recommendations of the reviewers CLS has developed a manual intake form that will be used program-wide that complies with LSC regulations and requirements. In addition, all staff will be provided with training at the CLS All Staff Conference in August, 2013. Attached is a copy of the revised manual intake form.

- 3. Finding 3: Sampled cases evidenced that CLS substantially complies with the income eligibility documentation requirements of 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 4.3, and applicable LSC instructions for clients whose income exceeds 125% of the Federal Poverty Guidelines (“FGP”). There were a limited number of cases reviewed that lacked the eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3. Additionally, CLS’ revised income eligibility policy is compliant with CFR Part 1611.**

Community Legal Services agrees with the finding, CLS has made recommended changes to the CLS financial eligibility policy and procedures to ensure consistent application, program-wide, of our newly revised financial eligibility policy. A copy of the new policy approved by the CLS board at its May 1, 2013 annual meeting is attached.

As stated in response to Finding 2 CLS will be providing training to all staff regarding the new policies and procedures during the All Staff Conference scheduled for August, 22-23, 2013.

- 4. Finding 4: Sample cases evidence that CLS substantially complies with the asset eligibility documentation required by 45 CFR §§1611.3 (c) and (d) and CSR Handbook (2008 ED., as amended 2011), § 5.4. There were a limited number of cases that did not contain the documentation required by 45 CFR §§ 1611.3 (c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. CLS’ revised asset eligibility policy is compliant with 45 CFR §§1611.2(d) and 1611.3 (d) (1) and (e).**

CLS agrees with the finding and has made recommended changes to the CLS financial eligibility policy specifically with respect to verifying, documenting, and applying exempt assets, and asset limit waivers. A copy of the new policy approved by the CLS Board at its May 1, 2013 annual board meeting is attached. As stated in response to prior findings CLS

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will be providing training to all staff regarding the new policies and procedures during the All-Staff Conference scheduled for August, 22-23, 2013.

- 5. Finding 5: CLS is in non-compliance with the documentation requirements of 45 CFR part 1626 (Restrictions on legal assistance to aliens). There were several case files reviewed that did not contain citizenship attestations and/or verifications of alien eligibility. CLS' revised policy is in compliance with 45 CFR Part 1626.**

CLS has taken corrective action to ensure compliance with the LSC regulations related timely and properly executed written citizenship attestations, or verifications of alien eligibility. Each office will now be required to execute written citizen attestation or verification of alien eligibility at first contact with any CLS staff. Pursuant to discussions with the review team leader the CLS policy was revised to be compliant with the requirements of 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), () 5.5, where appropriate. The revised policy was approved by the CLS board during its May 1, 2013 meeting.

In addition, CLS will provide training and instructions to all staff related to the changes in the policy at its All Staff Conference scheduled for August 22-23, 2013.

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

CLS agrees with the finding. CLS accepts the recommendation and will review all case files required to have a retainer agreement to verify that all agreements are properly executed and included in the case files, when required, and contain appropriate details as to the scope and subject matter of the representation.

- 7. Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). CLS' revised policy is compliant with 45 CFR Part 1636.**

CLS agrees with the finding. Pursuant to onsite discussions with the team leader regarding the CLS' statements of fact policy, the policy was revised and approved by the board during its May 1, 2013 annual meeting. A copy of the policy is attached.

- 8. Finding 8: Sample cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6 (c) (Priorities in use of resources). CLS' revised policy on priorities is compliant with 45 CFR Part 1620.**

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CLS agrees with the finding. Pursuant to onsite discussions with the team leader regarding the CLS policies related to the requirement for staff to sign a written agreement acknowledging CLS' priorities and emergency case acceptance policy and the requirement for annual review and reporting of the priorities as required by 45 CFR Part 1620 CLS amended the policy and the CLS board approved it during its May 1, 2013 annual board meeting. A copy of the policy is attached.

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

CLS agrees with the finding. CLS accepts the recommendation and will review all case files prior to file closing to ensure that the legal assistance provided is properly documented. Case files lacking documentation will not be reported to LSC during the CSR data submission.

10. Finding 10: Sample cases evidenced non-compliance with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011) (Case Closure categories).

CLS has taken steps to ensure that proper applications of the CSR case closure codes categories are observed. CLS discussed the issue with managing attorneys during its monthly meetings since the site visit. All cases will be reviewed by a managing attorney prior to closing to insure that the appropriate closure code category is utilized. In addition, CLS will provide training to all staff regarding the proper classification of the CSR case closure categories during its all staff conference in August, 2013.

11. Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Dormancy and untimely closure of cases).

CLS agrees with the finding. CLS accepts the recommendation and will conduct periodic review of case management reports on open and closed cases, particularly those limited service files that remain open for an extended period of time, to ensure against dormancy and the reporting of untimely closed cases.

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

CLS agrees with the finding. No comments.

13. Finding 13: Review of CLS' policies and the list of attorneys who have engaged in the outside practice of law, as well as interview with the Executive Director, three (3) Managing Attorneys, and the one (1) attorney who has engaged in the outside practice

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of law during the review period, revealed the CLS is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law). CLS' revised outside practice of law policy is also in compliance with 45 CFR Part 1604.

CLS agrees with the finding. Pursuant to discussions with the team leader CLS has revised its policy to incorporate the recommendations provided onsite. The board approved the newly revised policy at its May 1, 2013 annual board meeting. A copy of the new policy is attached.

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

CLS agrees with the finding. No comments

15. Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases). Additionally, CLS' revised policy on fee generating cases is in compliance with 45 CFR Part 1609.

CLS agrees with the finding. Pursuant to onsite discussions with the team leader CLS revised its policy related to fee-generated cases. The policy was approved by the board at its May 1, 2013 annual meeting. A copy of the policy is attached.

16. Finding 16: Review of CLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff demonstrated compliance with 45 CFR part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

CLS agrees with the finding. No comments.

17. Finding 17: CLS is substantially compliant with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of PAI cases. Additionally, CLS is substantially compliant

CLS agrees with the finding. Pursuant to the recommendations CLS will change its procedures to ensure that it meets the requirements of 45 CFR § 1614.3 (e) (l) (i) related to PAI activities and PAI expenditures. CLS will review its procedures to ensure that instances where legal advice and/or representation is being provided pursuant to a PAI outreach activity, the recipient has been screened and compliance with LSC regulations governing assistance prior to receiving the advice and or representation.

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In addition, pursuant to the documentation requirements of the CSR Handbook CLS will ensure that every case is closed as a PAI case contains the necessary documentation. To that end CLS will conduct periodic review of case management and case status reports on open and closed PAI cases to ensure effective PAI case oversight.

CLS will provide training for PAI staff related to written citizenship attestation or evidence of timely review of alien eligibility documentation in all files where a telephone applicant meets with a PAI attorney. The training will be provided to all staff during the all staff conference in August, 2013.

- 18. Finding 18: CLS is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or non-profit organization. CLS revised policy on subgrants is also in compliance with 45 CFR part 1627.**

CLS agrees with the finding. Pursuant to the on-site review of the CLS policies regarding compliance with 45 CFR Part 1627 CLS amended the policy and the board approved it. A copy of the revised policy is attached.

- 19. Finding 19: CLS is in substantial compliance with 45 CFR Part 1635 (Timekeeping requirement).**

CLS agrees with the finding. CLS has changed its procedures to ensure that all timesheet reports are approved by the employees' supervisor and that all payroll general ledger journal entry reports are reviewed and approved by the executive director or her designee.

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

CLS agrees with the finding. No comments.

- 21. Finding 21: Sampled cases reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on Lobbying and certain other activities). CLS' revised policy is in compliance with the requirements of 45 CFR Part 1612. A videotape available in a CLS branch office contains content that appears inconsistent with the requirements of 45 CFR Parts 1617.7(a) (2).**

CLS agrees with the finding. CLS has removed the videotape "UVAS NO" from the lobby of all offices, and has taken steps to ensure that the video tape is not offered for distribution or display to applicants and/or clients in any CLS office.

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CLS is in the process of implementing a system regarding the documentation of direct and indirect costs relating to 45 CFR 1612 activities, and the recordation of those costs on a cost/funding basis and to ensure that the CLS accounting system will be able to more readily provide the necessary documentation to comply with this requirement. The CLS Accounting Manual will be amended to reflect this change.

22. Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

CLS agrees with the finding. No comments.

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

CLS agrees with the finding. No comments

24. Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting), CLS' revised policy on redistricting is in compliance with the requirements of 45 CFR Part 1632.

CLS agrees with the finding. No comments.

25. Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 9Restriction on representation in certain eviction proceedings). CLS' revised policy is compliant with 45 CFR Part 1633.

CLS agrees with the finding. No comments.

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

CLS agrees with the finding. No comments.

27. Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation). CLS' revised policy on solicitation is compliant with 45 CFR Part 1638.

CLS agrees with the finding. No comments.

June 21, 2013

- 28. Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing). CLS' revised policy is compliant with 45 CFR Part 1643.**

CLS agrees with the finding. Pursuant to discussions with the team leader CLS revised its policy regarding permissible activities that could be performed under the regulation. The policy was approved by the CLS board during its May 1, 2013 meeting. A copy of the policy is attached.

- 29. 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)).**

CLS agrees with the finding. No comments.

- 30. Finding 30: CLS is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decisions, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency.**

CLS agrees with the finding. No comments.

- 31. Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information); however, on (1) slight revision was recommended.**

CLS agrees with the finding. Pursuant to discussions with the team leader CLS revised its policy to ensure compliance with the requirements of 45 CFR Part 1644. The revised policy was approved by the CLS board during its May 1, 2013 meeting. A copy of the policy is attached.

- 32. Finding 32: CLS Accounting Manual and Program Policies and Procedures relating to fiscal operations require updating to reflect current significant fiscal processed and controls needed to meet the requirements of LSC Grant Assurances, LSC Regulations, and the Accounting Guide for LSC recipients (2010 Ed).**

June 21, 2013

CLS agrees with the finding. Accordingly CLS has revised its Accounting Manual to reflect compliance with the requirements of 45 CFR § 1609.4; 45 CFR § 1612.10(b); 45 CFR Part 1612; 45 CFR § 1630.12 and 45 CFR 1634.

- 33. Finding 33: A limited review of CLS' internal control policies and procedures demonstrated that the policies and procedures compare favorably to Chapter 3, The Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System, of LSC's Accounting Guide for LSC Recipients (2010 Ed.) and LSC Program Letter 10-2.**

CLS agrees with the finding. No comments

- 34. Finding 34: Review of CLS' credit card payments reviewed for the months of June 2011 and 2012 disclosed that the majority of payments were appropriately reviewed, and approved. However, there were four (4) charges lacking supporting documentation at the time the charges were initially reviewed.**

CLS agrees with the finding. CLS has taken steps to ensure compliance with the Accounting Guide for LSC recipients and our Corporate Card policy which will require employees to face disciplinary actions who intentionally or negligently violates the policy. CLS shall seek reimbursement for any expenditures on the CLS account that are not incurred in connection with CLS business or which adequate documentation is lacking.

IV. Recommendations

Consistent with the findings of the report CLS accepts and plans to implement the recommendations listed and outlined in our response to each of the findings.

IV. Required Corrective Actions

Consistent with the findings of this report, CLS agrees to take the corrective actions listed and outlined in our foregoing responses to each of the findings.

June 21, 2013

List of Community Legal Services Revised Policies
Approved by the CLS Board on May 1, 2013

1. Solicitation of Clients
2. Class Action Policy
3. Prohibition on Cases Related to Redistricting
4. Representation on Cases Involving Assisted Suicide Euthanasia and Mercy Killing
5. Restrictions on Advocacy
6. Plaintiff's Statements
7. Outside Employment
8. LSC Case Disclosure Semi-Annual Reporting Procedures
9. Fee-Generating Cases
10. Eligibility Policy
11. Emergency Procedures
12. Dues
13. Appeals
14. Administrative and Legislative Advocacy
15. Alien Eligibility
16. Prohibitions Regarding Welfare Reform Activities

List of other Attachments

17. TAP Manual Intake Form
18. Pika Tables & Menus Intake Type
19. CLS Board of Directors Consent Agenda Reports, May 1, 2013

REPRESENTATION ON CASES INVOLVING ASSISTED SUICIDE EUTHANASIA AND MERCY KILLING

No CLS employee may, while using LSC funds assist in support, bring suit or provide any form of legal assistance whatsoever:

1. For the purpose of causing, or for the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual; or compelling any person, institution, organizational entity to provide or fund any item, benefit, program, or service for such purpose; or
2. Assisting or advocating a legal right, cause, or assist in causing, the suicide, euthanasia, or mercy killing of an individual; or
3. Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing the suicide, euthanasia, or mercy killing of any individual.

Applicability

A. Nothing in this section shall be interpreted to apply to:

- A. The withholding or withdrawing of medical treatment or medical care;
- B. The withholding or withdrawing of nutrition or hydration;
- C. Abortion;
- D. The use of items, goods, benefits, or services furnished for the purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death; or
- E. The provision of factual information regarding applicable law on assisted suicide, euthanasia and mercy killing. Nor shall §1643.3 be interpreted as limiting or interfering with the operation on any other statute or regulation governing the activities listed in this paragraph.

B. this part does not apply to activities funded with a recipient's non-LSC funds.

While CLS is not restricted by LSC regulations from handling these cases with non-LSC funds, no advocate shall proceed with such a case without the written authorization of the Litigation Director or the Executive Director.

If any advocate has any question whether these prohibitions apply to a specific fact situation, the advocate should consult with his/her manager.

FEE-GENERATING CASES

“Fee-Generating Case” means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, may reasonably be expected to result in a fee to CLS from an award to a client, from public funds, or from the opposing party. It does not include a case where a court appoints CLS or a CLS attorney to provide representation pursuant to a statute, court rule, or practice of equal applicability to all attorneys in the jurisdiction or if CLS were to undertake representation under a contract with a government agency or other entity.

CLS attorneys shall not provide legal assistance to eligible clients in fee-generating cases unless it is consistent with CLS priorities, LSC regulations and other adequate representation is unavailable.

Other adequate representation for a CLS client is considered to be unavailable under the following circumstances:

- A. If the attorney seeking to represent the client has referred the case to a local lawyer referral services or to two private attorneys and the case has been rejected; or neither the lawyer referral service nor two private attorneys will consider the case without payment of a consultation fee; or
- B. Documented attempts to refer similar cases in the past generally have been futile; or
- C. Recovery of damages is not the principal object of the client’s case and substantial statutory attorneys’ fees adequate to other private counsel are not likely to be available; or
- D. An eligible client that is seeking benefits under Subchapter 11 or the Social Security Act, 42 U.S.C. §401, et seq., as amended, Federal Old Age, Survivors and Disability Insurance Benefits, or Subchapter XVI of the Social Security Act, 42 U.S.C. §1381; or
- E. Pursuant to consultation with representatives of the private bar, the case is of a type that private attorneys in the geographical area do not accept without payment of a fee; and
- F. Because of emergency circumstances the lawyer must take immediate action before referral can be made, provided that he or she advises the client that, if

appropriate and consistent with his/her professional responsibility, the case may be referred to another lawyer at a later time.

Accounting for and use of Attorney's Fees

Attorney's fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

Attorney's fees received shall be recorded during the accounting period in which the money from the fee award and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

Acceptance of Reimbursement from Client

When a case results in recovery of damages or statutory benefits CLS may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses.

Approval of Case

- A. If at any time a CLS attorney desires to take a fee-generating case, he or she shall submit the appropriate form to the Litigation Director requesting approval for acceptance of the case. [Form 25]
- B. The Litigation Director or other designee of the Executive Director shall review the request and advise the Executive Director in writing of his/her recommendation as to whether the matter should be approved for representation.
- C. The Executive Director shall consider the recommendation of the Litigation Director/designee and the request of the responsible attorney and advise the attorney in writing as to whether the request had been approved.
- D. The Executive Director shall keep the original request and approval or disapproval in the administrative files of CLS and a copy shall be placed in the client file by the responsible attorney.
- E. Fees awarded to CLS as compensation for litigating a particular matter which was initiated prior to April 26, 1996 or which are properly recoverable by CLS shall be

remitted to the Finance Department and recorded in the same fund to which the related expenses were charged.

- F. CLS shall institute disciplinary proceedings against any employee who violates this policy and procedure.

SOLICITATION OF CLIENTS

I. The Prohibition

LSC regulation prohibits CLS and its employees from representing a client as a result of in-person unsolicited advices. The regulations also prohibit CLS and its employees from referring to other federally-funded legal services programs, including individuals to whom they have given in-person unsolicited advice.

“In-person” means a face-to-face encounter or personal encounter via other means of communication such as a letter or telephone call.

“Unsolicited advise” means advices to obtain counsel or take legal action given by CLS or CLS employee does not have an attorney-client relationship.

II. Permissible Activities

The anti-solicitation regulation does not in any way constrain communications with persons who are CLS clients. In other words, advocates may advise an existing client that he/she should consider legal representation on a matter with regard to which the client is not currently being represented.

The regulation does not apply when a person seeks advice from CLS or a CLS employee. In that event, any advice rendered in response is not “unsolicited.”

CLS or its employees may provide the public or individuals with information regarding legal rights and responsibilities, community education activities, outreach, or public service announcements. Information about CLS’ services and intake procedures may be similarly disseminated.

CLS is not prohibited from representing or referring clients to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including those who are institutionalized or are physically or mentally disabled.

CLASS ACTION POLICY

I. Prohibition on Initiating or Participating in Class Action

No CLS employee shall initiate or participate in any class action in connection with their employment with CLS, and no CLS funds shall be used to initiate or participate in a class action law suit, unless such funds are “Tribal funds” within the meaning of LSC regulations, that is, they are funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Native Americans and such participation is funded exclusively from such “Tribal funds.”

II. Definitions

- A. “**Class action**” means a lawsuit filed as, or otherwise declared by the court having jurisdiction over the case to be, a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure or the comparable state statute or rule of civil procedure applicable in the court in which the action is filed.
- B. “**Initiating or participating in any class action**” means any involvement at any stage of a class action prior to an order granting relief, including acting as amicus curiae, co-counsel or providing legal assistance to an individual client who seeks to intervene in a class action. Until January 1, 1997, the prohibition also includes providing legal assistance to an individual client who seeks to withdraw from, opt out of, modify or challenge the adequacy of the representation of a class.

The prohibition does not include non-adversarial monitoring of an order granting relief or individual representation of a client seeking to obtain the benefit of relief ordered by the court.

PROHIBITION ON CASES RELATED TO REDISTRICTING

CLS advocates are prohibited from becoming involved in any way in any matter related to redistricting.

REPRESENTATION ON CASES INVOLVING ASSISTED SUICIDE EUTHANASIA AND MERCY KILLING

No CLS employee may, while using LSC funds assist in support, bring suit or provide any form of legal assistance whatsoever:

1. For the purpose of causing, or for the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual; or compelling any person, institution, organizational entity to provide or fund any item, benefit, program, or service for such purpose; or
2. Assisting or advocating a legal right, cause, or assist in causing, the suicide, euthanasia, or mercy killing of an individual.

While CLS is not restricted by LSC regulations from handling these cases with non-LSC funds, no advocate shall proceed with such a case without the written authorization of the Litigation Director or the Executive Director.

If any advocate has any question whether these prohibitions apply to a specific fact situation, the advocate should consult with his/her manager.

RESTRICTIONS ON ADVOCACY

CLS advocates shall not undertake services outside of the priorities, even if those services would not be prohibited by LSC regulations or other law. However, there are areas of practice which are prohibited by LSC regulation and under no circumstances should CLS personnel be involved in activities in those areas, even if the activities overlap a CLS priority or could be characterized as falling within a permissible practice area. Those areas of practice which are absolutely prohibited to CLS personnel are:

- 1) Criminal law.
- 2) Redistricting- Prohibited are any efforts or activities, whether by request or otherwise, even if of a neutral nature, to alter, revise or reapportion a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census. Although participating in litigation related to redistricting is prohibited, non-redistricting litigation brought under the Voting Rights Act of 1965, as amended, is not prohibited.

Definitions:

"Advocating or opposing any plan" means any effort, whether by request or otherwise, even if of a neutral nature, to revise a legislative, judicial, or elective district at any level of government.

"Recipient" means any grantee or contractor receiving funds made available by the Legal Services Corporation under sections 1006(a)(1) or 1006(a)(3) of the LSC Act. For the purposes of this part, "recipient" includes subrecipient and employees of recipients and subrecipients.

"Redistricting" means any effort, directly or indirectly, that is intended to or would have the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census.

Prohibitions:

Community Legal Services shall 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.

This part does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42 U.S.C. 1971 et seq., provided such litigation does not involve redistricting.

Public housing evictions on behalf of persons charged with or convicted of illegal drug activities. CLS is prohibited from defending any person in a proceeding to evict that person from a public housing project if:

- a. The person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance with the intent to sell or distribute; and
- b. The eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

By its terms, the regulation only applies to evictions from public housing projects. Therefore, evictions of Section 8 certificate holders who are in private housing do not appear to be covered by the prohibition. However, attorneys must obtain approval of the Litigation Director before undertaking representation in any housing matter in which the client has been charged with or convicted within the past year of illegal drug activities.

PLAINTIFF'S STATEMENTS

Whenever CLS files a complaint in a court of law, initiates or participates in litigation against a defendant, or engages in pre-complaint settlement negotiations, the responsible attorney must obtain a "plaintiff's statement" as described below.

A. Applicability

1. To plaintiffs only. Therefore, no statement is necessary if CLS' client is an actual or potential defendant (as in an eviction proceeding), even if the client has a counterclaim.
2. To court litigation and pre-court litigation. It does not apply to administrative proceedings.
3. To pre-filing negotiations. If you are conducting negotiations as a way of resolving a matter prior to filing a lawsuit, you must obtain a plaintiff's statement prior to conducting the negotiation. You do not provide the statement to the party (ies) with whom you are negotiating. You do not need a plaintiff's statement if you are simply seeking information or conducting a factual investigation in order to determine whether advocacy on behalf of the client is appropriate.
4. No statement is necessary in cases in which the advocate is only providing brief service.

B. Contents of the Statement

1. An enumeration of the particular facts known to plaintiff supporting the complaint.
2. The date of the statement.
3. The identity of each represented plaintiff by name, or in a separate notice. When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

- a. Verify the identity of each plaintiff represented by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented.
4. The signature of the plaintiff.
 5. The statement should be in English and, if necessary, in a language other than English that the plaintiff understands.

A verified complaint will satisfy the statement requirements if the client understands English. CLS lawyers are encouraged to use verified complaints as their plaintiff statements since the document is or will be public. A short, written, and signed factual summary of facts necessary to demonstrate the existence of a good faith, non-frivolous dispute (*i.e.*, with sufficient facts to satisfy notice pleading requirements) should be prepared for prepared for pre-complaint settlement negotiations if no complaint has been prepared. It is not necessary to include every fact which might support the claim, or every relevant piece of information. Make sure that there are no client confidences in the document.

C. Emergencies

Where the attorney reasonable believes that delay is likely to cause harm to a significant safety, property, liberty or interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter.

D. Disclosure of Statement

The statements are to be kept in the client files. Office/unit managers must keep a separate "Plaintiff's Statement" file and a copy of each plaintiff's statement should be kept in the manager's file.

NOTE: The statements are to be made available upon request to LSC or to any Federal monitors or auditors. Office managers who receive such a request should notify the Litigation director or Executive Director of the request before complying. The statements are not to be provided to courts, attached to complaints or give to opposing parties or counsel. Although the regulation states that the requirement is not intended to give any other party a right of

access to the statement, and that access by other parties is governed solely by the discovery rules of the court in which the action is pending, disclosure of the statement to the third party monitor or to LSC may abrogate any privilege which might otherwise attach to the document. Therefore, it is vitally important that no privileged or confidential information be included in the statement.

E. Identification of Plaintiffs in Complaint/Negotiations

In all complaints filed by CLS, the plaintiff must be identified. If such identification poses a threat to the health or safety of the plaintiff: CLS lawyers should consult with the Litigation Director. Under such circumstances, CLS May have to apply to a court for an Order protecting disclosure of such information, based on a determination that serious harm would probably result from disclosure. The identity of all plaintiffs represented by CLS and on whose behalf negotiation are conducted shall be disclosed to perspective defendant in pre-litigating negotiations, unless the above-described protective order is first obtained.

OUTSIDE EMPLOYMENT

General Policy

Outside employment is any employment in addition to an employee's regular, full-time job with CLS. Full-time employees shall not engage in outside employment if:

1. Such outside employment interferes with the efficient performance of the employee's duties; or
2. Such employment constitutes a conflict of interest with the employee's duties; or
3. Such employment occurs during the employee's regular or assigned working hours and prior written approval has not been granted by the Executive Director. The Executive Director may determine if any absence due to such outside employment must be taken as compensatory time, annual leave or leave without pay.

Outside Practice of Law (45 CFR Part 1604)

Definitions

- a. **Full-time Attorney** – means an attorney who is employed full-time by CLS in legal assistance activities supported in major part by LSC and who is authorized to practice law in the jurisdiction where assistance is provided.
- b. **Outside Practice of Law**-means the provision of legal assistance to a client who is not receiving that legal assistance from CLS but does not include court appointments except where specifically stated or the performance of duties as a Judge Advocate General Corps attorney in the United States armed forces reserves.
- c. **Court Appointment**- means an appointment in a criminal or civil case made by a court or administrative agency under a statute, rule or practice applied generally to attorneys practicing in the court or before the administrative agency where the appointment is made.

Every attorney employed by CLS is expected to devote full professional effort to CLS matters. Therefore, except for the limited exceptions outlined below, an attorney employed by CLS may not solicit or undertake outside professional employment.

Permissible Outside Practice

Except for the limited exceptions outlined below, an attorney may not solicit or undertake outside professional employment. Once the Executive Director determines that the representation is consistent with the attorney's responsibilities to CLS' clients and the attorney does not intentionally identify the case or matter with CLS, then the following limited exceptions can be conducted.

1. Outside practice of law is permissible if the attorney is: (a) newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; (b) acting on behalf of him or herself, a close friend, family member or another member of CLS' staff; (c) acting on behalf of a religious community or charitable group; or (d) participating in a voluntary pro bono or legal referral program affiliated with or sponsored by a bar association, or other legal organization or religious, community or charitable group.

Compensation

An attorney is not permitted to receive any compensation for the outside practice of law except in the case of a court appointment, consistent with this policy, or in the case where an attorney is newly employed and has a professional responsibility to close cases from a previous law practice and does so on their own time, as expeditiously as possible.

Use of CLS Resources

- a) For cases undertaken where the attorney is newly employed and has a professional responsibility to close cases from a previous law practice, the attorney may use *de minimis* amounts of CLS' resources for permissible outside practice of law if necessary to carry out the attorney's professional responsibilities so long as CLS' resources are not used for any prohibited activities.
- b) For cases undertaken pursuant to 1(b) through (d) above, an attorney may use limited amounts of CLS' resources for permissible outside practice of law if necessary to carry out the attorney's professional responsibilities so long as CLS' resources are not used for any prohibited activities.

Court Appointments

Full time attorneys are permitted to accept court appointment if the Executive Director determines that:

- a) Such appointment is consistent with CLS' primary responsibility to provide legal assistance to eligible clients in civil matters;

- b) The appointment is made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and
- c) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to CLS any compensation received.

It is permissible for a full-time attorney to identify CLS as his or her employer when engaged in representation to a court appointment.

If, under applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide pro bono legal assistance in addition to the attorney's work on behalf on CLS' clients, then such legal assistance shall be treated in the same manner as court appointments pursuant to this policy, provided that the activities are not otherwise prohibited by the LSC Act, applicable appropriations law, or LSC regulations.

Approval Process

If any attorney wishes to provide legal assistance which falls within one of the limited exceptions set forth above, the attorney shall notify the Executive Director in writing, describing the matter and explaining why it is an appropriate exception. Prior written approval of the Executive Director shall be obtained for each specific matter to be handled.

LSC CASE DISCLOSURE SEMI ANNUAL REPORTING PROCEDURES

LSC requires CLS to submit to it a Case Information Report semiannually as well as disclose to the public and to the Corporation certain information on cases filed in court by their attorneys, the report must include the following information:

A.

1. The name and full address of each party to the case, unless
2. The cause of action;
3. The name and full address of the court where the case is filed; and
4. The court case number.

B.

It is not necessary to report the name(s) and address (es) of the parties of: (a) the information is protected by an order or rule of court or by state or federal law; or rule of court or by state or federal law; (b) the CLS attorney handling the case reasonably believes that revealing such information would put the client at risk of physical harm.

Upon request CLS shall make the information required in paragraph (a) of this section available in written form to any person. CLS may charge a reasonable fee for mailing and copying documents.

a) The case disclosure requirements of this part apply:

1. To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;
2. Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;
3. To request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and
4. To cases filed pursuant to subgrants under 45 C.F.R. part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

Case disclosure requirements apply for each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, CLS shall disclose, in accordance with the requirements of this part, the following information:

- 1) The name and full address of each party to a case, unless:
 - a. The information is protected by an order or rule of court or by State or Federal law;
 - b. The recipient's attorney reasonable believes that revealing such information would put the client of the recipient at risk of physical harm;
 - c. The name and full address of the court where the case is filed; and
 - d. The case number assigned to the case by the court.

- 2) CLS shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

FEE-GENERATING CASES

“Fee-Generating Case” means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, may reasonably be expected to result in a fee to CLS from an award to a client, from public funds, or from the opposing party. It does not include a case where a court appoints CLS or a CLS attorney to provide representation pursuant to a statute, court rule, or practice of equal applicability to all attorneys in the jurisdiction or if CLS were to undertake representation under a contract with a government agency or other entity.

CLS attorneys shall not provide legal assistance to eligible clients in fee-generating cases unless it is consistent with CLS priorities, LSC regulations and other adequate representation is unavailable.

Other adequate representation for a CLS client is considered to be unavailable under the following circumstances:

- A. If the attorney seeking to represent the client has referred the case to a local lawyer referral services or to two private attorneys and the case has been rejected; or neither the lawyer referral service nor two private attorneys will consider the case without payment of a consultation fee; or
- B. Documented attempts to refer similar cases in the past generally have been futile; or
- C. Recovery of damages is not the principal object of the client’s case and substantial statutory attorneys’ fees adequate to other private counsel are not likely to be available; or
- D. An eligible client that is seeking benefits under Subchapter 11 or the Social Security Act, 42 U.S.C. §401, et seq., as amended, Federal Old Age, Survivors and Disability Insurance Benefits, or Subchapter XVI of the Social Security Act, 42 U.S.C. §1381; or
- E. Pursuant to consultation with representatives of the private bar, the case is of a type that private attorneys in the geographical area do not accept without payment of a fee; and
- F. Because of emergency circumstances the lawyer must take immediate action before referral can be made, provided that he or she advises the client that, if

appropriate and consistent with his/her professional responsibility, the case may be referred to another lawyer at a later time.

Approval of Case

- A. If at any time a CLS attorney desires to take a fee-generating case, he or she shall submit the appropriate for to the Litigation Director requesting approval for acceptance of the case. [Form 25]
- B. The Litigation Director or other designee of the Executive Director shall review the request and advise the Executive Director in writing of his/her recommendation as to whether the matter should be approved for representation.
- C. The Executive Director shall consider the recommendation of the Litigation Director/designee and the request of the responsible attorney and advise the attorney in writing as to whether the request had been approved.
- D. The Executive Director shall keep the original request and approval or disapproval in the administrative files of CLS and a copy shall be placed in the client file by the responsible attorney.
- E. Fees awarded to CLS as compensation for litigating a particular matter which was initiated prior to April 26, 1996 or which are properly recoverable by CLS shall be remitted to the Finance Department and recorded in the same fund to which the related expenses were charged.
- F. CLS shall instituted disciplinary proceedings against any employee who violates this policy and procedure.

ELIGIBILITY

Eligibility for legal assistance from Community Legal Services requires a determination that (1) applicant is financially eligible for CLS' services; (2) the legal problem falls within the priorities as approved by the CLS Board of Directors and (3) representation of the client would not create a conflict of interest for CLS under applicable provisions of the Code of Professional Conduct.

The Legal Services Act, 42 U.S.C. 2996 et seq., as implemented in the Code of Federal Regulations, 45 C.F.R. 1600 et seq., establishes specific criteria regarding client eligibility, intake and case representation. A copy of the Legal Services Regulations is provided to each new employee and is available to each office of Community Legal Services. In the event of a conflict between LSC regulations and any portion of this policy manual, LSC regulations govern.

Financial Eligibility

A. Definitions

1. **"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. Total cash receipts include:
 - a. Wages and salaries before any deductions;
 - b. Income from self-employment after deductions for business or farm expenses;
 - c. Regular payments from governmental programs for low income persons or persons with disabilities;
 - d. Social security payments;
 - e. Unemployment insurance benefits;
 - f. Worker's compensation;
 - g. Strike benefits from union funds;
 - h. Veterans benefits;
 - i. Training stipends;
 - j. Alimony or spousal maintenance;
 - k. Child support payments;
 - l. Military family allotments;
 - m. Public or private employee pension benefits;
 - n. Regular insurance or annuity payments;
 - o. Income from dividends, interest, rents, royalties or from estates and trust;
 - p. Any other regular or recurring sources of financial support that are currently and actually available to the applicant.

It does not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank or investment; tax refunds; gifts compensation or one-time payments for injuries sustained; other non-cash benefits; nor the first \$2,000 per year of trust income or other distributions received by Native Americans from their tribe.

2. **“Household”** means all persons who reside in the same household and are regularly supported by one another and have regularly made and are making their income and assets accessible to cover ordinary and non-ordinary expenses. This includes couples living together as man and wife (even though they are not) who though not legally required to support on another in fact regularly do so. Minor children or other dependents that are in fact supported by the family unit are to be considered part of the family unit.

3. **“Assets”** under 45 C.F.R. 1611 2(d) are those over which the individual seeking assistance has direct and unfettered access, without having to obtain the consent or cooperation of another person over whom the individual does not have control, and who does not in fact consent or cooperate. Absence of control and access will be presumed in spousal abuse cases. Assets re those which can be readily converted at fair market value to cash in the possession of the individual seeking legal assistance prior to the time that individual needs legal assistance. Net assets, after subtracting all expenses of conversion, including applicable taxes, are those to be considered.

B. Manner of Determining Financial Eligibility

1. **Income**

An applicant must meet the following financial guidelines to be eligible for CLS’ services. The maximum annual income level of CLS clients should be adjusted to the following:

Size of Family	Weekly	Monthly Income	Annually
1	\$276.19	\$1,196.83	\$14,362
2	\$372.85	\$1,615.67	\$19,388
3	\$469.48	\$2,034.42	\$24,413
4	\$566.12	\$2,453.32	\$29,438
5	\$661.06	\$2,864.58	\$34,375
6	\$759.38	\$3,290.67	\$39,488
7	\$856.02	\$3,709.42	\$44,513
8	\$952.63	\$4,128.08	\$49,537
Each Additional Person, Add	\$77.30	\$335.00	\$4,020

Pursuant to 45 C.F.R.1611.7 (a) (1), CLS staff shall make reasonable inquiry regarding sources of income, income prospects, and assets. If there is substantial reason to doubt the accuracy of financial information provided by an applicant for services, appropriate inquiry shall be made to verify information, consistent with the development of an effective attorney-client relationship.

Information furnished to CLS by an applicant for service or client to establish financial eligibility shall not be disclosed to any person who is not employed by CLS in a manner that permits identification of the client, without the express written consent of the client, subject to conditions outlined in the Legal Services Corporation regulations set forth in Grant Assurances Numbers 10, 11, and 12, Section 509(h), P.C. 104-134, 110 Stat. 1321 (1996), and protocol regarding access to information in grant recipients' files (January 5, 2004).

The maximum annual household income limit for LSC purposes is 125% of the Federal Poverty Guidelines for the year as approved by the Board of Directors. Legal assistance may be provided to an applicant whose annual household income exceeds the LSC limits, if it is supported by other funding and the applicant meets the criteria of the other funding source. An applicant whose gross income is between 125% and 200% of the federal poverty guidelines may be provided legal assistance under the following conditions:

- a) Consistent with the CLS' policies and this part, CLS may determine an applicant whose income exceeds CLS' applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed CLS' applicable asset ceiling established pursuant to 45 C.F.R. §1611.3 (d)(1);
- b) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount;
 - i. The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or
 - ii. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities.
- c) The applicant's income does not exceed 200% of the applicable Federal Poverty guidelines amount and CLS has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household;
 - i. Current income should take into account seasonal variations and other fluctuations in the applicant's annual income;
 - ii. Unreimbursed medical expenses and medical insurance premiums;
 - iii. Fixed debts and obligations;

- iv. Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
- v. Non-medical expenses associated with age or disability;
- vi. Current taxes; or
- vii. Other significant factors that CLS has determined affect the applicant's ability to afford legal assistance.

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.

If an applicant's income exceeds 200% of Federal Poverty Guidelines for the year as approved by the Board of Directors, legal assistance may be provided by a governmental program for low income individuals or families, or dependent upon the information received by the Executive Director or his/her designee, that the applicant's income is primarily committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for services.

2. Assets

Assets which are to be considered in determining eligibility are those the applicant has access to and can be readily converted to cash. Only the equity value of the assets is to be considered. Certain assets are exempt. These include:

1. The applicant's principal residence (*see* 45 CFR § 1611.3(d)(1));
2. Vehicles used for transportation (*see* 45 CFR § 1611.3(d)(1));
3. Assets used in producing income (*see* 45 CFR § 1611.3(d)(1));
4. The applicant's homestead (*see* Arizona Revised Statutes § 33-1101);
5. Up to \$4,000.00 in household furniture, furnishings and appliances (*see* Arizona Revised Statutes § 33-1123);
6. Food, fuel and provisions (*see* Arizona Revised Statutes § 33-1124);
7. Personal items including, but not limited to, up to \$500.00 in clothing, up to \$250.00 in musical instruments, up to \$500.00 in domestic pets, etc. (*see* Arizona Revised Statutes § 33-1125);
8. Money benefits or proceeds including, but not limited to, up to \$20,000.00 in survivor's benefits, retirement accounts, etc. (*see* Arizona Revised Statutes § 33-1126);
9. School equipment (*see* Arizona Revised Statutes § 33-1127);

10. Fire fighting equipment (*see* Arizona Revised Statutes § 33-1128);
11. Public property or property of a public character (*see* Arizona Revised Statutes § 33-1129);
12. Tools and equipment used in a commercial activity, trade, business or profession (*see* Arizona Revised Statutes § 33-1130); and
13. Disposable earnings, pursuant to the calculation outlined in Arizona Revised Statutes § 33-1131(B), (C) and (D) (*see* Arizona Revised Statutes § 33-1131).

****Pursuant to Arizona Revised Statutes § 33-1132, notwithstanding any agreement to the contrary, a waiver of the exemptions cited in Nos. 4 through 13 shall be void and unenforceable, except as specifically provided in Arizona Revised Statutes § 33-1122, and when done with notice.****

The maximum allowable in assets is \$5,000 for the applicant and an additional \$1,000 per household member to a maximum of \$10,000. All real property that is not the applicant's primary residence is presumed to be readily convertible to cash and must be taken into consideration in determining the applicant's eligibility.

If the applicant's income is derived solely from either TANF, Supplemental Security Income (SSI) or the entire household is eligible for Supplemental Nutrition Assistance Program no further information need be gathered regarding the household's assets and is considered automatically asset eligible.

Exceptions

Even when the person exceeds 200% of the Federal Poverty Guidelines for the year as approved by the Board of Directors and there are no extraordinary expenses which would reduce the applicant's annual income amount sufficiently to qualify the applicant for assistance the regulations allow the Executive Director to waive the income eligibility requirement. This may be done after there is an evaluation of whether the applicant would be able to secure private legal counsel at a low cost. In any case in which the Executive Director has approved providing services to persons whose gross income exceeds the maximum guidelines as set forth above, a copy of the approval shall be filed in CLS' administrative files. At the conclusion of the representation and as part of closing the case file, the responsible advocate shall report to administration the amount of time spent on the matter.

The Executive Director or designee may grant waivers of the assets ceiling in unusual circumstances. When the Executive Director or designee grants a waiver, the decision shall be documented and included in the client's file. The program will develop procedures, consistent with the attorney-client privilege and requirements of the Code of Professional Responsibility, to

maintain records of the number of clients served because of a waiver and the factual bases for the decisions to grant said waivers.

If an eligible client becomes ineligible through a change in the client's financial circumstances, CLS 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 clients whose continued representation is supported by LSC Funds. If an advocate desires to continue representation of a client whose representation was originally supported by LSC Funds and who now is ineligible to be represented with those Funds, written permission must be secured from the Executive Director.

If an eligible client becomes ineligible through a change in the client's status (i.e., becomes incarcerated, changes alienage category), the client's advocate, in consultation with the Litigation Director, shall take steps consistent with applicable rules of professional responsibility and any court involved, to withdraw, CLS shall continue its representation while continuing reasonable efforts to obtain substitute counsel.

3. Group Representation

CLS may provide assistance to a group, corporation, association or other entity if the entity provided information showing that it lacks, and has no practical means of obtaining funds to retain private counsel and:

1. The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or
2. The group has a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by LSC regulation §1611.6, CLS will consider the resources available to the group, including the group's income and income prospects, assets and obligations and either:

1. For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics

of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or

2. For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought related to such activity of the group.

CLS shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria above. The eligibility requirements apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by CLS, regardless of the source or funds supporting the assistance, must be otherwise permissible under applicable law and regulations.

EMERGENCY PROCEDURES

A. Definitions:

An emergency situation is one in which immediate action is required in order to (1) respond to an imminent threat to the personal safety of the applicant or the applicant's children; (2) prevent immediate deprivation of shelter; (3) enable the client to obtain necessities of life, including access to urgently required health care; or (4) preserve the client's legal rights from significant or irreparable harm.

A “**case**” is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services, and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

A “**matter**” is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as services, preparing and disseminating desk manuals, PAI, intake when no case is undertaken, and tracking substantive law developments.

A client must be otherwise eligible for CLS services before emergency services may be provided (i.e., financial, status and absence of conflict requirements must be met). Cases will not be undertaken which involve activities prohibited by the Legal Services Corporation Act or by Public Law 104-134.

B. Establishing Priorities:

1. CLS' Board of Directors shall adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and shall adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which may be under-taken by the recipient.
2. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonable calculated to obtain the

views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested person. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

3. The following factors shall be among those considered by the recipient in establishing priorities:
 - a. The suggested priorities promulgated by the Legal Services Corporation;
 - b. The appraisal described in paragraph (2) of this section;
 - c. The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;
 - d. The resources of the recipient;
 - e. The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;
 - f. The availability of other sources of training, support, and outreach services;
 - g. The relative importance of particular legal problems to the individual clients of the recipient;
 - h. The susceptibility of particular problems to solution through legal processes;
 - i. Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;
 - j. Whether legal efforts will result in efficient and economic delivery of legal services; and
 - k. Whether there is a need to establish different priorities in different parts of the recipient's service area.

C. Procedure:

In the event an advocate is presented with an emergency situation which appears to fall outside of program priorities or requires action before compliance with LSC requirements can be fully documented (*i.e.*, a telephonic intake where action is required before the advocate obtains a signed “plaintiffs’ statement”), the following procedures apply:

1. If the case appears to be outside of CLS priorities, obtain approval of the Managing Attorney. In the absence of the Managing Attorney, approval must be sought from the Director of Litigation. The Managing Attorney has the authority to determine whether a particular matter constitutes an emergency. The Managing Attorney should complete the Emergency Out of Priority Form [Form 52], place a copy in the client’s file, and promptly provide a copy to the Litigation Director.
2. Tailor the CLS advocacy response so that, to the extent possible, it addresses the immediate emergency presented and does not embroil the advocate in ancillary or non-emergency issues.
3. Explain to the client the limitation of the scope of services which CLS is prepared to provide in a manner calculated to be understood by the client.
4. If the matter is one for which a retainer agreement is appropriately sought, limit the scope of representation clearly on the retainer agreement.
5. Document the fact that these procedures were followed and the scope of the assistance provided to the client in the client’s file.
6. The Litigation Director/designee will provide reports to the Board of Directors concerning Emergency Out of Priority matters handled by CLS as required by regulation.
7. If the emergency falls within priorities but requires action before all procedural requirements are satisfied (*i.e.*, plaintiffs’ statements), the advocate must make sure that all forms are completed and other procedural requirements are met at the earliest practicable time.

These emergency procedures do not preclude further, non-emergency assistance to the particular client. Any such further assistance must be assessed pursuant to the office’s regular staffing process and in accordance with established priorities and procedures.

D. Annual Review

The CLS Board shall set the priorities annually. The following factors should be among those considered in determining whether the recipient's priorities should be changed;

1. The extent to which the objectives of the recipient's priorities have been accomplished;
2. Changes in the resources of the recipient;
3. Changes in the size, distribution, or needs of the eligible client population; and
4. The volume of non-priority emergency cases or matters in a particular legal area since priorities were last reviewed.

E. Signed Written Agreement

All staff who handled cases or matters, or are authorized to make decisions about cases acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

1. Has read and is familiar with the priorities of the recipient;
2. Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
3. Will not undertake any case or matter for the recipient that is not a priority of an emergency.

F. Reporting

CLS staff report to the board on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

CLS shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that was not within the recipient's priorities.

CLS shall submit to the Corporation and make available to the public a annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the

The ethical guidelines governing the existence of a conflict are ER 1.7 (general rule) and ER 1.9 (former clients). ER 1.8 prohibits lawyers from entering into business transactions with a client, and all lawyers should review this provision, together with all of the rules regarding professional conduct. Since the manual cannot address all of the potential conflict situations, those provisions will not be analyzed here. Lawyers must apply the criteria in those rules in any case in which they believe there is a possibility of a conflict.

Lawyers must also keep in mind, however, that the mere fact the CLS has represented one party in a divorce proceeding does not automatically preclude future representation of the spouse in an unrelated matter in which the advocate is not in a position where he/she can or should use confidential information relating to the first client to that first client's disadvantage. ER 1.9.

DUES

CLS shall pay Arizona State Bar and Local County bar fee dues for attorneys. CLS will not pay section dues without specific approval of the Executive Director. In addition, other court admission fees will be paid when necessary with the approval of the Executive Director. CLS may also pay state and local organizational dues for legal secretaries and paralegals with prior approval of the Executive Director. Payment of dues under this paragraph shall be made in a manner consistent with LSC regulations.

I. Purpose

In accordance with the Legal Services Corporations requirements 45 C.F.R.16§27, CLS adopts the following rules under which LSC funds may be transferred to other organizations (including other LSC grantees).

II. Definitions

- (a) **“Recipient”** as used in this part means any recipient as defined in section 1002(6) of the Act *and* any grantee or contractor receiving funds from the Corporation under section 1006(a)(1)(B) or 1006 (a)(3) of the Act.

- (b) (1) **“Subrecipient”** shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such representation of eligible clients, or which provide 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 attorney representing a recipient’s clients on contract or *judicare* basis, except that any such arrangement involving more than \$25, 000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by business machine purchase and/or maintenance. A single entity could be a Subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

III. (2) **“Subgrant”** shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a Subrecipient under the definition set forth in paragraph (b) (1) of this section.

(c) **“Membership fees or dues”** as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

IV. Requirements for all sub-grants

- a. (1) All subgrants must be submitted in writing to the Corporation for prior, written approval. The submission shall include the terms and conditions of the subgrant and the amount of funds intended to be transferred.
- (2) The Corporation shall have 45 days to approve, disapprove, or suggest modifications to the subgrant. A subgrant which is disapproved or to which modifications are suggested may be resubmitted for approval. Should the Corporation fail to take action within 45 days, the recipient shall notify the Corporation responds within 7 days of the receipt of such notification, the subgrant shall be deemed to have been approved.
- (3) Any subgrant not approved according to the procedures of paragraph (a)(2) of this section shall be subject to audit disallowance and recovery of all the funds expended pursuant thereto.
- (4) Any subgrant which is a continuation of a previous subgrant and which expires before March 1, 1984 may be extended until March 1, 1984, if a new subgrant agreement is submitted for approval to the Corporation by January 15, 1984. In the event the Corporation refuses to allow the renewal of any such submitted agreement, the recipient shall be permitted to allow the Subrecipient 60 days' funding to close out the subgrant activities.
- b. (1) A subgrant may not be for a period longer than one year, and all funds remaining at the end of the grant period shall be considered part of the recipient's fund balance.
- (2) All subgrants shall contain a provision providing for their orderly termination in the event that the recipient's funding is terminated or the recipient is not refunded and for suspension of activities if the recipient's funding is suspended.
- (3) A substantial change in the work program of a subgrant or an increase or decrease in funding of more than 10% shall require Corporation approval pursuant to the provisions of section 1627.3(a). Minor changes of work program or changes in funding of less than 10% shall not require prior Corporation approval, but the Corporation shall be informed in writing thereof.
- c. Recipients shall be responsible for ensuring that subrecipients comply with the financial and audit provisions of the Corporation. The recipient is responsible for

ensuring the proper expenditure, accounting for, and audit of delegated funds. Any funds delegated by a recipient to a subrecipient shall be subject to the audit and financial requirements of the Audit and Accounting Guide for and Auditors. The delegated funds may be separately disclosed and accounted for, and reported upon in the audited financial statements of a recipient; or such funds may be included in a separate audit report of the subrecipient. The relationship between the recipient and subrecipient will determine the proper method of financial reporting in accordance with generally accepted accounting principles. A subgrant agreement may provide for alternative means of assuring the propriety of subrecipient expenditures, especially in instances where a large organization received a small subgrant. If such an alternate means is approved by the audit Division of the Corporation, the information provided thereby shall satisfy the recipient's annual audit requirement with regard to the subgrant funds.

- d. The recipient shall be responsible for repaying the Corporation for any disallowed expenditures by a subrecipient, irrespective of whether the recipient is able to recover such expenditures from the subrecipient.
- e. To assure subrecipient compliance with the Act, Congressional restrictions having the force of law, Corporation Regulations (45 C.F.R. chapter XVI), and Corporation with respect to subrecipients as apply to recipients.

V. Membership fees or dues

- (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 governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

VI. Contributions

Any contributions or gifts of Corporation funds to another organization or to an individual are prohibited.

VII. Transfers to other recipients

- (a) The requirements of §1627.3 shall apply to all subgrants by one recipient to another recipient.
- (b) The subrecipient shall audit any funds subgrants to it in its annual audit and supply a copy of this audit to recipient. The recipient shall either submit it as an addendum to that recently submitted audit.
- (c) In addition to the provisions of §1627.3(d), the Corporation may hold the subrecipient directly responsible for any disallowed expenditures of subgrant funds. Thus, the Corporation may recover all of the disallowed costs from either

recipient or subrecipient or may divide the recovery between the two; the Corporation's total recovery may not exceed the amount of expenditures disallowed.

- (d) Funds received by a recipient from other recipients in the form of fees and dues shall be accounted for and included in the annual audit of the recipient receiving these funds as Corporation funds.

In addition, there are a number of restrictions or procedures which govern certain types of advocacy. Some of these restrictions or procedures are dictated by regulation; others are CLS' own administrative requirements. The following sections of the manual review the guidelines for specific areas of advocacy. The order in which they are discussed has no significance.

APPEALS

In the event that there is an appealable judgment or order adverse to a client, a decision must be made whether an appeal is warranted. The decision to appeal or represent a client in an appeal should be based on the following criteria:

- A. The relationship of the issue to established priorities;
- B. The merits of the appeal;
- C. The potential benefit and risk to the client of pursuing the matter;
- D. The resources of CLS' to be used in proceeding with the appeal, including estimate of amount of time to be spent on the appeal; and
- E. The ability of the responsible attorney to handle the appeal.

The purpose of the policy is to discourage frivolous appeals, to give appropriate consideration to priorities and regulations of the Legal Services Corporation, and to avoid interference with the professional responsibilities of CLS to its remaining clients.

In the event that CLS obtains a favorable judgment on behalf of a client and the judgment is appealed by the opposing party is ordinarily the case that CLS' representation of the client should continue throughout the appeal process.

“Appeal” as used in this policy means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed. It does not apply to appeals from Judicare to Superior court, although CLS lawyers are expected to evaluate the merits of such an appeal rigorously as they would any other appeal. All appeals must be approved by the Executive Director before they are filed, according to the following procedure:

- A. The responsible attorney shall complete the appropriate form requesting approval to pursue the appeal, addressing each of the criteria identified in the above policy. This form should be submitted to the Litigation Director no later than the tenth judicial day following receipt by the attorney of the order or judgment sought to be appealed from; [Form 2]

- B. The Litigation Director/designee shall review the form and advise the Executive Director in writing of his/her recommendation as to whether the matter should be approved for appeal, using the above criteria as the basis for the decision;
- C. The Executive Director shall consider the recommendation of the Litigation Director and the request of the responsible attorney and advise the attorney in writing, as to whether the request for appeal has been approved;
- D. The Executive Director shall keep the original of the request and approval in the administrative files of Community Legal Services and a copy shall be placed in the client file by the responsible attorney;
- E. Drafts of appellate briefs must be submitted to the Litigation Director at least 72 hours prior to the filing deadline; and
- F. CLS shall institute disciplinary proceeding against any employee who violates this policy and procedure.

ADMINISTRATIVE AND LEGISLATIVE ADVOCACY

I. Purpose

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. The 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's activities, and when they may respond to requests of legislative and administrative officials.

II. Definitions

(a) (1) *Grassroots lobbying* means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending legislation or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to, or participation by recipients in, any demonstration, march, rally, or fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) *Grassroots lobbying* does not include communications which are limited solely to reporting on the content or status of, or explaining, pending or proposed legislation or regulations.

(b) (1) *Legislation* means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, ratification of treaties and intergovernmental agreements, approval of appointments and budgets and approval or disapproval of actions of the executive.

(2) *Legislation* does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by and Indian Tribal Council.

(c) *Public policy* means an overall plan embracing the general goals and procedures of any governmental body and pending or proposed statutes, rules, and regulations.

(d) (1) *Rulemaking* means any agency process for formulating, amending, or repealing rules, regulations or guidelines of rulemaking of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

- i. The customary procedures that are used by an agency to for the issuance amendment or revocation of regulations or other statements of general applicability and future effect, such as negotiated rulemaking and “notice and comment” rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies; and
- ii. Adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) *Rulemaking* does not include;

- i. Administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as Social Security hearings, welfare fair hearings, or granting or withholding of licenses; or
- ii. Communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency’s rules, regulations guidelines, policies or practices.

(e) *Public rulemaking* means any rulemaking proceeding or portion of such proceeding or procedure that is open to the rulemaking published in the FEDERAL REGISTER or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) *Similar procedure* refers to a legislative process by which matters must be determined by a vote of the electorate.

III. Permissible Legislative or Administrative Advocacy

CLS employees may respond to a written request from a government agency or official, elected official, legislative body, committee, or member thereof under the following circumstances:

- A. The request must be in writing;

- B. The request cannot be solicited or arranged for by a CLS employee;
- C. Non-LSC funds must be used in connection with any response to a written request; and
- D. CLS may provide oral or written comments to an agency and its staff in a public rule-making proceeding, but only if non-LSC funds are used.

If the foregoing circumstances are met, the CLS response may be distributed only to the party or parties that made the request or to other persons or entities only to the extent that such distribution is required to comply with the request. If request according to the foregoing, a CLS employee may engage in the following:

- A. Testify orally or in writing;
- B. Analyze or review legislation, existing or proposed rules, regulations, or drafts thereof;
- C. Provide factual information, data, or research;
- D. Obtain information from other organization or individual regarding the request; and
- E. Participate in negotiated rule-making under 5 U.S.C. §561 et,seq or comparable state or local law.

CLS shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

CLS may use non-LSC funds to provide oral or written comment to an agency and its staff in a public rulemaking proceeding.

CLS may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

IV. Permissible Activities using any Funds

Notwithstanding the foregoing prohibitions regarding grassroots, administrative and legislative advocacy, CLS employees may engage in the following activities:

- A. CLS may provide administrative representation for an eligible client in an adjudicatory proceeding or in negotiations that address or adjudicated that client's legal rights or responsibilities;
- B. To the extent consistent with CLS priorities, CLS may initiate or participate in litigation challenging agency rules, regulations, guidelines, or policies, unless such litigation is otherwise prohibited by law or LSC regulations (e.g., "welfare reform");
- C. CLS may apply for a governmental grant or contract;
- D. CLS may communicate with a governmental agency for the purpose of obtaining information, clarification or interpretation of rules, regulations, practices, or policies;
- E. CLS may inform a client, other legal services organizations, attorneys representing eligible clients or client groups about new or proposed statutes, executive orders, or administrative regulations;
- F. CLS employees may communicate directly or indirectly with LSC for any purpose;
- G. CLS employees may participate in meetings or serve on committees of bar associations so long as such participation does not include grass-roots lobbying nor involve CLS resources for prohibited legislative or rule-making activities and the CLS employee is not identified with activities of bar associations that include such prohibited activities;
- H. CLS employees may inform a client of the client's right to communicate directly with an elected official; and
- I. CLS employees may participate in activities related to the judiciary, including the promulgation of court rules of professional responsibility and disciplinary rules.

No employee of CLS may directly or indirectly solicit or arrange a request from an official to testify or make representations in connection with legislative or administrative activities.

No such communication with public officials shall occur prior to written approval from the Executive Director in accordance with the following procedure.

V. Prohibited Administrative and Legislative Advocacy

- A. Except as provided in C.F.R. 45 §1612.5 and §1612.6, recipients shall not attempt to influence:
 - 1. The passage or defeat of any legislation or constitutional amendment;
 - 2. Any initiative, or any referendum or any similar procedures of the Congress, any State legislature, and local council, or any similar governing body acting in any legislative capacity;
 - 3. Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,
 - 4. The conduct of oversight proceedings concerning the recipient or the Corporation.
- B. Except as provided in §1612.5 and §1612.6, CLS shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order;
- C. CLS shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense associated with an activity prohibited in paragraphs (A) and (B) in this section.

VI. Procedure Regarding Requests From Elected Officials

CLS employees must adhere to the following procedure before responding to an administrative or legislative official:

- A. The CLS employee must complete the appropriate form stating the type of response requested by the public official, and identifying the specific concern, regulation, legislation, or executive, or administrative order to be addressed [Form 25]. A copy of the request shall be attached to the form;
- B. The Litigation Director shall consider the request, using the criteria in the above policy, and submit a recommendation to the Executive Director for final approval; and

- C. The Executive Director shall make a final decision regarding the request. If the request is approved, documentation pertaining to the approval must be kept in the administrative files and any client file.

VII. Political Activities

This policy is designed to ensure that CLS' resources will be used to provide high quality assistance and not to support or promote political activities or interests. This policy should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

No employee shall intentionally identify CLS with any partisan or non-partisan political activity, or with the campaign of any candidate for public or party office.

While employed at CLS, no employee shall at any time use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or non-partisan, or directly or indirectly coerce, attempt to coerce, command, or advise an employee of CLS to pay, lend or contribute anything of value to a political party or committee, organization, agency, or person for political purposes, or be a candidate for partisan elective public office.

While working during normal working hours or using resources provided by CLS (whether LSC or non-LSC) or providing legal advice or representation to a CLS client, no CLS employee shall:

- A. Engage in any political activity or any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or any voter registration activity;
- B. Engage in grassroots lobbying;
- C. Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation;
- D. Encourage, direct, or coerce others to engage in such activities;
- E. Engage in rioting or civil disturbances or encourage, direct, or coerce others to engage in such activities;
- F. Engage in activities determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction or encourage, direct or coerce others to do so;

- G. Engage in other illegal activity that is inconsistent with an employee's responsibilities under applicable law, LSC regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law, or encourage, direct or coerce others to do so;
- H. Using CLS funds (whether LSC or non-LSC) to initiate the formation, or act as an organizer of any association, federation, labor union, coalition, network, alliance, or any similar entity. This does not apply to task forces, substantive law conferences, or community economic development activities consistent with CLS priorities and LSC regulations.

Nothing in this policy is intended to prohibit a CLS attorney from informing and advising an eligible client about legal alternative to litigation or the lawful conduct thereof or to interfere with the fulfillment of the attorney's professional responsibilities to a client.

Training

In accordance with LSC regulations, CLS may not support or conduct training programs that (1) Advocate particular public policies; (2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rule-making; (3) Disseminate information about such policies or activities; or rule-making; or (4) Train participants to engage in activities prohibited by the Act, other applicable law, or Corporation regulations, guidelines or instructions.

Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them: (1) To provide adequate legal assistance to eligible clients; or (2) to provide advice to any eligible client as to the legal rights of the client.

Organizing

CLS may not use funds provided by the Legal Services Corporation or by private entities to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity. This section shall not be construed to apply to: (a) Informational meeting attended by persons engaged in the delivery of legal the services at which information about new developments in law and pending cases or matters are discussed; or (b) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

CLS and its employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

Recordkeeping

No funds made available by the Legal Service Corporation shall be used to pay for administrative overhead or related costs associated with activity listed in §1612.6. CLS shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rule-making activities permitted by §1612.6.

CLS shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to §1612.6, together with such supporting documentation as specified by the Corporation. CLS shall institute disciplinary proceeding against any employee who violates this policy and procedure.

ALIEN ELIGIBILITY¹

45 C.F.R., part 1626 outlines LSC restrictions on providing legal assistance to certain aliens. A copy of the LSC regulations is provided with this manual. These restrictions apply to all CLS activities, even those supported by non-LSC funds. CLS may provide normal intake and referral services to ineligible aliens. CLS may not provide legal assistance for or on behalf of an ineligible alien except where otherwise permitted in this policy.

- I. CLS can represent the following persons or classifications of aliens:
 - A. U.S. citizens;
 - B. Lawful permanent resident aliens;
 - C. Lawful temporary resident aliens under the seasonal agricultural worker (SAW) programs;
 - D. Aliens who are either married to a U.S. citizen, the parent of a U.S. citizen, or an unmarried child under the age of 21 of a U.S. citizen, provided they have filed an application for adjustment of status to permanent residency and such application has not been rejected;
 - E. Aliens who have been granted refuge, asylum, or who have been granted withholding of deportation; Aliens who have been granted conditional entrant status prior to April 1, 1980;
 - F. H-2A non-immigrant agricultural workers concerning the worker's employment contract, including provisions related to wages, housing, transportation, and other employment rights provided in the worker's specific contract;
 - G. Replenishment agricultural workers (RAW) admitted for temporary residence;
 - H. "Kennedy Amendment" victims of domestic violence (see below); and
 - I. Certain Pacific Islanders and cross-border Indians not generally relevant for CLS purposes.

¹ The information set forth herein has been taken in part from an analysis provided by the National Center for Immigration Rights.

II. Definitions

“Citizen” includes persons described or defined as citizens or nationals of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*) (citizens by naturalization) or antecedent citizens statutes.

“Eligible alien” means a person who is not a citizen but who meets the requirements of §1626.5.

“Ineligible alien” means a person who is not a citizen and who does not meet the requirements of §1626.5.

“Rejected” refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

To provide legal assistance “on behalf of” an ineligible alien is to render legal assistance to an eligible client, which benefits an ineligible alien and does not affect a specific legal right or interest of the ineligible alien and does not affect a specific legal right or interest of the eligible client.

“Battered or subjected to extreme cruelty” includes, but is not limited to being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

“Legal assistance directly related to the prevention of, or obtaining relief from, the batter or cruelty” means any legal assistance that will assist victims of abuse in their escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse.

“United States” for purposes of this part, has the same meaning given that term in 8 U.S.C. 1101(a)(38) of the INA. [62 FR 19414, Apr.21, 1997, as amended at 62 FR 45757, Aug. 29, 1997]

III. Explanation of the Terms

A. U.S. Citizen

Persons born in the U.S. acquire U.S. citizenship at birth. In addition, persons born abroad but whose parents are both U.S. citizens are usually U.S. citizens at birth.

Finally, persons born abroad, one of whose parents is a U.S. citizen and the other is an alien, may also be U.S. citizens depending upon the citizen parent's length of residence in the U.S. The law in this area can get complicated. Remember to ask the citizenship of the client's parents before concluding that he or she is an alien. If one of the parents is a U.S. citizen, obtain further legal advice or assistance before making a decision regarding case acceptance.

B. Lawful Permanent Resident Alien

Aliens who are lawful permanent residents have been admitted into the U. S. with a "green card" or "mica," which is formally known as an I-551 card. These aliens have the right to reside permanently in the U.S. to engage in almost all forms of employment, and to travel outside the U.S. There are five ways to obtain permanent residence:

1. Through a close family relationship to another U.S. citizen or permanent resident alien;
2. By having special job skills needed in the U.S.;
3. As a relief from deportation, such as asylum or suspension;
4. Through "registry" for persons who have been in the U.S. since prior to January 1, 1982; and
5. Through the legalization programs. Through legalization, aliens can obtain permanent residency under either the seasonal agricultural worker program (§210 of the Immigration and Nationality Act) or the general amnesty program on continuous residence prior to January 1, 1982 (§245A of the INA).

C. Lawful Temporary Resident Under The SAW Program

The deadline for filing under the seasonal agricultural worker (SAW) program was November 30, 1988. Upon filing, most SAW applicants received a temporary work authorization card, called an I-688A. After their application is adjudicated and approved, they will receive an I-688 card, which is proof of lawful temporary resident status. SAWs who have obtained their temporary residency are actually considered permanent residents for most purposes. Therefore, they are eligible for representation while in this status.

D. Applicant For Permanent Residency

This is the most difficult category to understand for LSC representation purposes. Two requirements must be met:

1. A close relationship to a U.S. citizen, and
2. An application for permanent residency must be on file. The alien must be either the spouse of a U.S. citizen, the parent of a U.S. citizen, or the unmarried child under 21 of a U.S. citizen. The application for permanent residency can include the following:
 - a. An application for SAW legalization (Form I-700);
 - b. An application for adjustment of status (Form I-485);
 - c. An application for registry (Form I-485);
 - d. An application for suspension of deportation (Form I-256A);
 - e. An application for immigrant visa filed at a U.S. consulate (Form OF-230 or “packet four”).

In addition to the above examples, it is arguable that the following are also applications for adjustment of status, although they are not cited in the regulations, 45 C.F.R. §1626.5 (b) (2), as examples of applications for adjustment of status to permanent residency;

- f. An application for temporary residency under the §245A legalization program (Form I-687);
- g. An application to classify an alien as an immediate relative (Form I-130); and
- h. An application for asylum (Form I-589).

Since the examples give in the regulation are only illustrative, CLS may be able to accept other authoritative documents issued by INS evidencing eligible alien status. However, advocates should confer with the Litigation Director before accepting other evidence of eligible alien status. Legal arguments can be made as to why these additional forms also qualify as applications for adjustment of status to permanent residency.

Application for adjustment of status to permanent residency must not have been “rejected” or denied by the INS. If the petitioner can still pursue further administrative appeals, the application is not “rejected.” Representation of the alien is therefore limited to the time during which the application is under administrative consideration and not during the time it is under judicial review.

E. Refugee

Aliens who have been afforded the legal status of refugee or who have been granted asylum status are eligible for representation. Prior to the 1980 Refugee Act, persons were granted entry to the U. S. as “conditional entrants” due to the political situation in their home countries. Conditional residents are eligible for representation. Persons who are not granted refugee or asylum status may nevertheless be granted “withholding of deportation” based on the alien’s fear of persecution and the political situation in the alien’s home country. These persons are also eligible for services.

F. **H-2A Worker**

Aliens who have been admitted to the United States and have been present in the United States pursuant to an H-2A contract can be represented by staff, but only as to matters involving their employment contract. These matters could include wages, housing, health problems, or other employment rights. Staff can represent and/or continue to represent these clients even if the client leaves the United States before or during the course of the representation. Staff may not represent aliens in this category who have never been present in the United States under the H2A program.

G. **Replenishment Agricultural Worker**

Aliens who are admitted as temporary residents under the Replenishment Agricultural Worker (RAW) program are also eligible for representation. This program could begin admitting these non-immigrants as early as early as October, 1989, it is determined that there is a shortage of workers in agriculture created by SAWs moving into other forms of labor. Three years after admission to the U.S. as temporary residents, RAWs can apply for permanent residency, provided they have performed a sufficient amount of agricultural employment during that period.

H. **“Kennedy Amendment” Victims of Domestic Violence [Form51]**

Pursuant to the Violence Against Women’s Act of 2006 (VAWA, 2006) and LSC Program Letter 06-2, LSC funds may be used to provide legal assistance to an alien who has been battered or subjected to extreme cruelty in the United States by any of the following: (1) a spouse; (2) a parent; or (3) a member of the spouse’s or parent’s family residing in the same household as the alien and the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty. The legal assistance must be directly related to the prevention of, or obtaining of relief from, the battery or cruelty.

LSC funds may be used to provide legal assistance to an alien whose child has been battered or subjected to extreme cruelty in the United States without the active participation of the alien in the battery or extreme cruelty by any of the following: (1) a spouse of the alien, (2) a parent of the alien; or (3) a member of the spouse’s or

parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty.

In addition to covering aliens who have been battered or subjected to extreme cruelty, the VAWA 2006 Amendments expand coverage to permit LSC grantees to serve victims of sexual assault or trafficking or aliens who qualify for a "U" visa under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA). A "U" visa provides for lawful temporary status for an alien who the Attorney General determines has suffered substantial abuse as a victim of certain criminal activity, possesses information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity and such criminal activity violated U.S. law or took place in the U.S. Certain family members of a "U" visa applicant may also apply for "U" visa relief.

The VAWA 2006 Amendments also cover any alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, sexual assault or trafficking in the United States, or meets the qualification of section 101(a)(15)(U) of the INA, without regard to the immigration status of the parent.

"Battery or extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

"Directly related" means legal assistance designed to permit the victim of abuse to escape from the abusive situation ameliorate the effects of the abuse and protect against future abuse. Examples of "directly related" assistance include, but are not limited to:

- a. Seeking orders of protection;
- b. Representation in divorce proceedings; and
- c. Representation to secure housing, medical, or income assistance for the victims of abuse.

I. Temporary Absence from United States of Eligible Aliens

For all aliens except H-2A workers (see specific rules for H-2A workers above in II (f)), staff may represent eligible aliens even when they are not in the United States so long as the eligible alien is present in the United States a sufficient amount of time to maintain residence or lawful immigration status. Therefore, staff may initiate

representation of eligible aliens who are temporarily outside of the United States provided that they have been present a sufficient amount of time to maintain and have not abandoned their residence or immigration status. In addition, if representation of an eligible client has begun, staff may continue the representation even if the client has temporarily left the United States, if the client is present in the United States a sufficient amount of time to maintain residence or lawful immigration status.

J. **Other**

CLS may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction Remedies Act, 42 U.S.C. §11607(b) provided that they are otherwise financially eligible within priorities (including emergency criteria) and there is no conflict with a present or former CLS client.

IV. **APPLICABILITY**

Except for §1626.12, the requirements of this part do not apply to the use of LSC or non-LSC funds b a recipient to provide legal assistance to an alien:

1. Who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or
2. Whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; provided that the legal assistance is directly related to the prevention of, or obtaining relief from, the battery or cruelty.

V. **ALIEN STATUS AND ELIGIBILITY**

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

- a. An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the INA (8 U.S.C. 1101(a)(20));
- b. An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

- c. An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the INA (8 U.S.C. 1158).
- d. An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7) as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;
- e. An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the INA (8 U.S.C. 1253 (h)); or
- f. An alien who meets the requirements of §1626.10 or 1626.11.

VI. REPRESENTATION "FOR OR ON BEHALF OF" AND INELIGIBLE ALIEN

LSC programs can represent U.S. citizens, lawful permanent resident aliens, and other eligible aliens. They can also represent otherwise ineligible aliens with LSC and non-LSC funds who "have been battered or subjected to extreme cruelty by a spouse or parent" (Kennedy Amendment) victims of domestic violence). Questions arise when the assistance provided to an eligible person also benefits a family member who is ineligible to receive assistance. The alien restrictions prohibit services "for or on behalf of" and ineligible alien. Representation "for" an ineligible alien is the equivalent of accepting that person as a client, which is prohibited. Representation "on behalf of" and eligible alien is providing service to an eligible client which do not "affect a specific legal right or interest of the eligible client" but which instead benefit an ineligible alien. The alien regulations were modified to ensure that the eligible client who is being represented does in fact have some legal right or interest in the case or in the services provided 42 C.F.R. §1626.3(c).

For example, CLS can provide assistance in any situation where the eligible client has a legal interest in the case, whether it is a landlord-tenant issue, consumer problem, public entitlement case, or employment-related dispute. In the domestic relations area, remember that the client must have a "legal right or interest." State law will govern whether, for example, a child has a legal right or interest in a custody challenge or in a dispute over child support payments or the visitation rights of the parent.

VII. PROCEDURES FOR DOCUMENTING ELIGIBILITY

All clients who claim to be citizens must sign a citizenship form. Verification of citizenship is not required unless the advocate has reason to doubt that a person is a United States citizen. Examples of appropriate “reason to doubt” may not be based on the applicants’ personal characteristics, such as accent, language abilities, appearance or race. Questioning citizenship attestation on such personal characteristics could constitute illegal discrimination. Evidence of citizenship may include.

- A. U.S. Passport;
- B. Birth certificate;
- C. Naturalization certificate;
- D. U.S. Citizenship Identification Card (INS Form I-197);
- E. Baptismal certificate showing place of birth within the U. S. and date of baptism within two months after birth;
- F. Any other authoritative document such as a document issued by INS, a court, or any other governmental agency, that provides evidence of citizenship; and
- G. Attestation or minor or incompetent person by a parent, legal guardian, or other legal representative.

If a person is unable to produce evidence of eligibility:

- a. CLS shall require all applicants for legal assistance whom claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.
- b. When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as person’s accent, limited English-speaking ability, appearance, race or national origin as a reason to doubt that the person is a citizen.
 1. If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic of any of the following documents as evident of citizenship:
 - i. United States passport;
 - ii. Birth certificate;
 - iii. Naturalization certificate;
 - iv. United States Citizenship Identification Card (INS Form I-97 or I-197); or

- v. Baptismal certificate showing place of birth with in the United States and date of baptism within two months after birth.
2. A recipient may also accept any other authoritative document such as a document issued by INS, by a court or another governmental agency that provides evidence of citizenship.
3. If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

An alien seeking representation shall submit appropriate documents (which may be apparently complete photocopies) to verify eligibility. The advocate responsible for the matter shall keep a copy in the client file of all documents provided to CLS to establish eligibility, except where copying the documents is impossible or illegal. In such situations, the advocate shall include description of the document(s) in the file.

In an emergency, assistance may be provided prior to compliance with §1626.6 and §1626.7 if:

- a. An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or
- b. An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the necessary documentation as soon as possible; and
- c. CLS informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

Any office which accepts a "Kennedy Amendment" client must designate the matter as a matter which is not funded from CLS' basic grant. Questions regarding the mechanics and accounting for such cases should be addressed to the Comptroller.

No written verification of eligibility is required when the only service is provided for an eligible alien or citizen is brief service and consultation by telephone. However, prospective clients whose legal problem can be resolved through brief service or consultation shall be asked

to orally declare their citizenship and/or eligible alien status. “*Brief Service*” does not include continuous representation of a client.

If a client who was an eligible alien becomes ineligible through a change in circumstances, the CLS advocate responsible for the services being provided to the client must discontinue representation in a manner consistent with the Rules of Professional Conduct. Any decision to discontinue representation and the procedures for terminating representation must be discussed in advance with the Litigation Coordinator/Director of Advocacy.

VIII. VERIFICATION OF ELIGIBLE ALIEN STATUS

- A. An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone which does not include continuous representation of a client.
 - 1. As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic, of any of the documents found in the appendix to the part.
 - 2. CLS may also accept any other authoritative document issued by the INS, by a court or by another governmental agency that provided evidence of alien status.
- B. CLS shall upon request furnish each person seeking legal assistance with a list of the documents in the appendix to this part.

IX. SPECIAL ELIGIBILITY QUESTIONS

This part does not apply to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

- A. All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.
- B. All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.
- C. Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

- D. An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provision of the Immigration Reform and Control Act (“IRCA”) is considered a permanent resident alien for all purposes except immigration under the provisions of 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.
- E. A recipient may provide legal assistance to indigent foreign national who seek assistant pursuant to the Hague Convention on the Civil Aspects of International Child abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42, U.S.C. 11607(b), provided that they are otherwise financially eligible.

X. **H-2 AGRICULTURAL WORKERS**

- A. Nonimmigrant agricultural worker admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly call H-2 workers, may be provided legal assistance regarding the matters specified in paragraph (B) of this section.
- B. The following matters which arise under the provisions of the worker’s specific employment contract may be the subject of legal assistance by and LSC-funded program:
1. Wages;
 2. Housing;
 3. Transportation; and
 4. Other employment rights as provided in the worker’s specific contracts. under which the nonimmigrant worker was admitted.

XI. **DOCUMENTATION FOR REJECTED “INELIGIBLE ALIENS” AND “KENNEDY AMENDMENT” CLIENTS**

To protect the confidentiality needs of Kennedy Amendment clients and persons who are rejected because of alien status, CLS is not required to maintain immigration records for these applicants.

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 Adopted by CLS Board of Directors May 1, 2013

Alien category	Immigration Act (INA)	LSC regs; 45 CFR §1626	Examples of acceptable documents
LAWFUL PERMANENT RESIDENT	INA § 101(a)(20); 8 USC § 1101(a)(20).	§1626.5(a)	I-551 or I-151 or I-181 (Memorandum of Creation of Record of Lawful Permanent Residence), with approval stamp; or passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; or order granting registry, suspension of deportation, cancellation of removal, or adjustment of status from the INS, an immigration judge, the BIA, or a federal court; or I-327 Reentry Permit; or I-94 with stamp indicating admission for lawful permanent residence; or any verification from INS or other authoritative document.
ALIEN WHO IS — married to U.S. citizen, or—parent of U.S. citizen, or—unmarried child under 21 of U.S. citizen and —has filed an application for adjustment of status to permanent residency.	INA §§ 208, 210, 244 (replaced by INA § 240A(b) for aliens in proceedings initiated on or after 4/1/97), 245, 245A, 249; 8 USC §§ 1158, 1160, 1254 (replaced by 1229b(b) for aliens in proceedings initiated on or after 4/1/97), 1255, 1255a, 1259.	§ 1626.5(b)	Proof of relationship to U.S. citizen* <i>and proof of filing:</i> ** I-485 (application for adjustment of status based on family-based visa, registry, or various special adjustment laws) or I-256A or EOIR-40 (application for suspension of deportation) or EOIR-42 (application for cancellation of removal) or I-817 (application for Family Unity) or I-881 (application for NACARA suspension or special rule cancellation and adjustment) or OF-230 (application at consulate for visa) or I-129F (Petition for Alien Fiancé (e) (for spouses and children of USCs applying for K-status) or I-130 (family-based immigrant visa petition) or I-360 (self-petition for widow(er) or abused spouse or child) or I-539 indicating application for V status

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*or I-589 (application for asylum)
or I-698 (application to adjust from temporary
to permanent residence)
or I-730 (refugee/asylee relative petition)
or any verification from INS or other
authoritative document.*

**Proof of relationship may include: copy of
marriage certificate accompanied by
proof of spouse's U.S. citizenship; copy
of birth certificate, religious archival
document such as baptismal certificate,
adoption decree or other documents
demonstrating*

*parentage of a U.S. citizen; copy of birth
certificate, baptismal certificate, adoption
decree, or other documents*

*demonstrating alien is a child under age 21,
accompanied by proof parent is a U.S.
citizen, or in lieu of the above, a copy of INS
Form I-130 (visa petition) or I-360 (self-
petition) containing*

*information demonstrating alien is related to
such a U.S. citizen, accompanied by
accompanied by proof parent is a U.S.
citizen, or in lieu of the*

*above, a copy of INS Form I-130 (visa
petition) or I-360 (self-petition) containing
information demonstrating alien is related to
such a U.S. citizen, accompanied by proof of
filing.*

***Proof of filing may include a fee receipt or
cancelled check showing that the application
was filed with the INS or the immigration
court; a filing stamp showing that the
application was filed; or a copy of the
application accompanied by a declaration or
attestation signed by the immigrant, or the
immigrant's attorney or legal representative
for the application, that such
form was filed. Proof of filing is also
established by: a letter or Form I-797 from
INS or the immigration court acknowledging*

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			<p>receipt of or approval of one of the above-listed forms; <i>or</i> Form I-94 (arrival/departure record) or I-512 (advance parole) indicating entry to pursue an above-listed application; <i>or</i> I-688B or I-766 (employment authorization document) coded 8 CFR § 274a.12(c)(9) (applicant for adjustment), (c)(10) (applicant for suspension or cancellation), (c)(16) (applicant for registry), (c)(21) (S-visa principal or dependent), (c)(20) or (22) (legalization applicant), (c)(24) (LIFE Act legalization applicant), (a)(9) (K-status), (a)(13)(Family Unity), (a)(14) (LIFE Act Family Unity), (a)(15) (V-status), (a)(16) or (c)(25) (T-status) or (c)(8) (asylum applicant).</p>
REFUGEE	INA § 207, 8 USC§ 1157.	§ 1626.5(c)	<p>I-94 or passport stamped “refugee” or “§ 207” <i>or</i> I-688B or I-766 coded 8 CFR § 274a.12 (a)(3)(refugee) or §274a.12(a)(4)(paroled as refugee) <i>or</i> I-571 refugee travel document <i>or</i> any verification from INS or other authoritative document.</p>
ASYLEE	INA § 208, 8 USC§ 1158.	1626.5(c)	<p>I-94 or passport stamped “asylee” or “§ 208” <i>or</i> an order granting asylum from INS, immigration judge, BIA, or federal court <i>or</i> I-571 refugee travel document <i>or</i> I-688B coded 8 CFR §274a.12(a)(5)(asylee) <i>or</i> any verification from INS or other authoritative document.</p>
GRANTED WITHHOLDING OR DEFERRAL OF DEPORTATION OR REMOVAL	INA 241(b)(3) or former INA § 243(h), 8 USC § 1251(b)(3) or former 8 USC § 1253(H).	§ 1626.5(e)	<p>I-94 stamped “§ 243(h)” or “241(b)(3)” or an order granting withholding or deferral of deportation or removal from INS, immigration judge, BIA, or federal court <i>Also acceptable</i> I-688B coded 8 CFR § 274a.12(a)(10)(granted withholding of deportation or removal) <i>or</i> any verification from INS or other</p>

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CONDITIONAL ENTRANT	INA § 203(a)(7), 8 USC § 1153(a)(7).	§ 1626.5(d)	authoritative document. I-94 or passport stamped “conditional entrant” <i>or</i> any verification from INS or other authoritative document.
H-2A AGRICULTURAL WORKER	INA § 101 (a)(15)(H)(ii); 8 USC § 1101 (a)(15)(ii).	§ 1626.11	I-94 or passport stamped “H-2” <i>or</i> any verification from INS or other authoritative document.
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT	INA § 210.8 USC § 1160.	§ 1626.10(d)	I-688, 688A, 688B, or 766 indicating issuance under § 210 (or under 8 CFR § 274a. 12(a)(2), with other evidence indicating eligibility under INA § 210) <i>or</i> any verification from INS or other authoritative document.

PROHIBITIONS REGARDING WELFARE REFORM ACTIVITIES

CLS and its employees shall not initiate legal representation or participate in litigation challenging laws or regulations enacted as part of an effort to reform a federal or state welfare system. CLS and its employees may only participate in lobbying or rulemaking activities directed at efforts to reform a federal or state welfare system to the extent that such activities fall within the scope of permissible administrative and legislative advocacy as set forth in this manual and under applicable LSC regulations and are performed with non-LSC funds.

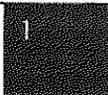
“Federal or state welfare system” means; (1) all of the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) except for the child support enforcement provisions of Title III; (2) any legislation following PRWORA enacted by Congress or the states to implement, replace, or modify key components of the provisions of the PRWORA; or (3) by state legislation to replace or modify key components of its general assistance or similar means-tested programs conducted by the state or by counties with state funding or under state mandates.

Prohibited Activities

Participation in litigation challenging laws or formally promulgated regulations enacted as part of an effort to reform a federal or state welfare systems. "Formally promulgated" regulations are those which have been the subject of notice and comment procedures;

Participation in rulemaking involving proposals that are being considered to implement a reform of a federal or state welfare system, unless such participation uses non-LSC funds to comment in a public rulemaking proceedings or responds to a written request for information or testimony from a federal, state or legislative body, local agency or member thereof; or

Lobbying or other advocacy before legislative or administrative bodies undertaken directly or through grassroots efforts regarding pending or proposed legislation that is part of a reform of a federal or state welfare system unless such efforts are undertaken with non-LSC funds in accordance with the restrictions on such advocacy set forth in this manual and LSC regulations.



Permissible Activities

CLS or its employees may engage in the following:

Challenges to a welfare law that was not enacted as part of a welfare reform effort, CLS may challenge welfare agency regulations and guidelines which are not promulgated under notice and comment procedures. According to supplementary information from LSC, CLS may challenge a welfare policy change that is not a "key component" of a welfare reform effort. Such a "key component" "is intended to mean a fundamental restructuring of a welfare program, such as the transformation of an entitlement program into a block grant program." It does not include "minor changes in policy that are not necessary to a state effort to reform the welfare system. An example of a "minor change" is the scope of reimbursable costs under Temporary Assistance for Needy Families (TANF) work rules. Since the question of what constitutes a "key component" and what is a "minor change" is not clear, any decision about whether a case is prohibited under this regulation should be made in consultation with the Director of Litigation;

Representation of individual eligible clients who are seeking specific relief from a welfare agency involving laws, regulations or policies that were not enacted as part of a reform of a federal or state welfare system, provided that the representation does not amend or otherwise challenge federal, state or local statutory laws or ordinances which are enacted as an effort to reform a federal or state welfare system or regulations issued pursuant thereto that have been formally promulgated pursuant to public notice and comment procedures;

Representation of individual eligible clients who are seeking to enforce existing law or challenge the application of existing law to the individual seeking relief. In other words, CLS may claim on behalf of an eligible client that a welfare agency is not properly applying existing law to that person, even if the law CLS is seeking to enforce was enacted as part of a reform of a federal or state welfare system. The representation provided must not involve an effort to amend, enjoin, and declare invalid or otherwise challenge a federal or state welfare system as that term is defined in this provision;

CLS may use non-LSC funds (e.g., Iolta or United Way funds) to comment in a public rulemaking proceeding involving an effort to reform a federal or state welfare system. Any such comments must be discussed with and submitted for review to the Litigation Director prior to their submission in the public record or to the agency involved. Approvals of the Litigation Director and the Executive Director are

required before any such comments are submitted in the public record or to the agency involved; and

CLS may use non-LSC funds to respond to a written request for information or testimony regarding an effort to reform a state or federal welfare system from a federal, state or local agency, legislative body, or committee, provided that the response by the recipient is made only to the party making the request and the recipient does not arrange for the request to be made. In other words, the provisions of the legislative and administrative advocacy regulation regarding unsolicited requests from lawmakers takes precedence over the welfare reform restrictions. The substance of any responses to unsolicited, written requests for responses by a lawmaker on an issue that could be characterized as welfare reform must be reviewed by the Litigation Director prior to its issuance. Approvals of the Litigation Director and the Executive Director are required prior to issuing a response to a lawmaker on an issue that could be characterized as welfare reform.

Are you handicapped?/¿Está incapacitado/a? Yes/Sí No

If so, please explain/Si así es, favor de explicar su incapacidad:

Have you or your children been a victim of domestic violence?/¿Ud. y/o sus hijos han sido victimas de violencia doméstica? Yes/Sí No

Marital Status/Estado Civil: Married/Casado/a Single/Soltero/a Separated/Separado/a
Divorced/Divorciado/a Widow/er/Viudo/a

If you live with another adult, such as a spouse, boyfriend/girlfriend, etc., Please provide the following information for that person/Si Ud. vive con otro adulto, tal como su esposo/a o novio/novia,etc., Favor de proporcionar la información siguiente de esa persona:

Name/Nombre: _____
First/Primero MI/Medio Inicial Last/Apellido

Relationship/Relación: Spouse/Esposo/a Boyfriend/Novio Girlfriend/Novia
Significant Other/Pareja Domestica

Date of Birth/Fecha de Nacimiento: _____

Social Security Number/Numero de Seguro Social: _____ - _____ - _____

Do you receive assistance from any of the following
Ud. recibe ayuda de cualquier de lo siguiente:

Food Stamps/Estampillas de Comida Yes/Sí No
Case Number/Numero de Caso#

AHCCCS Yes/Sí No
Case Number/Numero de Caso#

Medicare Yes/Sí No

Subsidized Housing/Vivenda Subvencida Yes/Sí No

Name of Housing Organization/Nombre del Organización de Vivenda

Do you currently have an attorney representing you?/¿Actualmente tiene Ud. representación de un abogado? Yes/Sí No

Have you received any court papers?/¿Ha recibido papeles de la corte? Yes/Sí No

What date did you receive them?/¿Fecha en qué recibió los papeles?

When is the court date?/¿Cuando es la fecha de la corte?

Date/Fecha

Time/Hora

Which court?/¿Cual Corte?:

How many are there in your household that you are responsible for including yourself?/¿Cuántas personas viven en su hogar por cual Ud. tiene responsabilidad inclusive Ud.?:

Adults/Adultos _____ Children/Niños _____

Income/Assets Information/Ingresos /Información de Recursos

Are you currently employed?/¿Esta empleado/a? Yes/Sí No

Is your spouse/companion currently employed?/¿Está empleado/a su esposo/a? Yes/Sí No

Employment Income Engreso de empleo	Hourly rate Salario por hora	Hours a week * Horas por semana (Full-time or Part-time)
Employment/Empleo	\$	
Spouse Employment/Empleo de su esposo/a	\$	

Other Source of Income/Otro Fuente de Ingreso

Income/Ingreso	Amount/Suma
Child Support/Manutenimiento de Niños	\$
Spousal Maintenance/Mantenimiento de Esposo/a	\$
Pension/Pensión	\$
Unemployment/Desempleo*(Enter weekly amount/Semenal)	\$
Worker's Compensation/Compensación del Trabajador	\$
TANF (Cash Assistance/Dinero en Efectivo de DES)	\$
OASDI (Social Security/Seguro Social)	\$
SSDI (Social Security Disability/Seguro Social de Incapacidad)	\$
SSI (Supplemental Security Income/Suplemento de Ingresos Sociales)	\$
Veteran's Benefits/Beneficios de Veterano	\$
Other Income/Otro Ingreso	\$
Total Monthly Income/Ingreso Mensual	\$

Do you own any real estate other than the home in which you live?/¿Es propietario de cualquier propiedad además del hogar en que Ud. vive? Yes/Sí No Value/Valor: \$

Do you have a checking account?/¿Tiene una cuenta bancaria?
Yes/Sí No Balance: \$

Do you have a savings account?/¿Tiene cuenta de ahorros?
Yes/Sí No Balance: \$

How many vehicles does you household own?/Cuántos vehículos hay en su casa?

Do you own other assets such as stocks, bonds,CD's?/¿Tiene algun otro recursos tal como acciones, bonos, certificados de depósitos? \$_____ Can these be readily converted to cash?/Se puede cambiar a dinero en efectivo facilmente?

Do you expect to receive any additional income and/or assets in the near future/Anticipa Ud. ingresos o recursos adicionales en el futuro cercano? Yes/Sí No

Monthly Fixed Expenses/Gastos Mensualmente Fijos

Expense/Gasto	Amount/Suma
Mortgage/Hipoteca	-\$
Rent/Renta	-\$
Vehicle Payment/Abono de vehículo	-\$
Child Care/Gastos del Cuidado del Niño	-\$
Child Support/Pagos de Mantenimiento para Niños	-\$
Spousal Maintenance/Mantenimiento de Esposo/a	-\$
Employment Expenses(Uniforms, Dues, Etc.) Gastos del Empleo Mensuales(Uniformes, Cuotas, Etc.)	-\$
Payroll Taxes/Impuestos de Salario	-\$
Unreimbursed Medical Expenses/Gastos Médicos sin Reembolso	-\$
Other Expenses/Otros Gastos	-\$
Total Monthly Expenses/Gastos Total	-\$

Please Describe The Problem You Are Having
Favor de Describir el Problema Que Tiene:

- 1 | Employment Income
- 9 | Spouse Employment
- 6 | Child Support Income
- 13 | Pension Income
- 7 | Maintenance Income
- 15 | Unemployment Compensation
- 11 | Worker's Compensation
- 19 | TANF
- 4 | General Assistance
- 2 | OASS/Social Security
- 12 | SSDI
- 3 | SSI
- 16 | Veteran Benefits
- 18 | Other Income
- 8 | No Income
- 14 | Trust, Interest, Div.
- 17 | Senior, Unknown
- K | Rent Expense
- L | Mortgage Payment
- M | Transportation Expenses
- A | Current Taxes
- E | Unreimbursed Medical Expenses
- G | Child Care Expenses
- H | Child Support Expenses
- I | Spousal Maintenance
- F | Employment Expenses
- J | Other Fixed Expenses

**COMMUNITY LEGAL SERVICES
LAW OFFICES**

CENTRAL OFFICE
P.O. Box 21538
305 South Second Avenue
Phoenix, Arizona 85036-1538

FARMWORKER OFFICE
P.O. Box 21538
305 South Second Avenue
Phoenix, Arizona 85036-1538

EAST VALLEY OFFICE
1220 S. Alma School Road, Suite 206
Mesa, Arizona 85210

ADMINISTRATIVE UNIT

P.O. Box 21538
305 South Second Avenue
Phoenix, Arizona 85036-1538
Telephone (602) 258-3434, Ext. 2300
FAX (602) 253-1536
TDD (602) 254-9852
www.clsaz.org

MOHAVE OFFICE
1720 Beverly, Suite A
Kingman, Arizona 86401

YAVAPAI OFFICE
401 N. Mount Vernon
Prescott, Arizona 86301

YUMA OFFICE
201 South 1st Avenue
Yuma, Arizona 85364

VOLUNTEER LAWYERS PROGRAMS
Maricopa County - Central Office
Yavapai County - Prescott Office
Yuma/La Paz Counties - Yuma Office

**CLS Board of Directors
Consent Agenda Reports
May 1, 2013**

I. President's Report (D. Suits)

II. Consent Agenda Reports

Attendance Report – March 6, 2013

Board Minutes – March 6, 2013

Financial Statement for the Period Ending March 31, 2013

Executive Committee Meetings (D. Suits)

March 25, 2013 (Telephonic)

Participants: Executive Committee Members: Doug Suits (Presiding); Anne Chapman; Robert Pastor; Victoria Beckman; Patrick Fowler; Carlene Higgins; and Clarence Matherson, Jr. Lillian Johnson (CLS Executive Director).

Agenda: Financial statement for the period ending 02/28/13; 2012-2013 Board of Directors Client Services, Human Resources, Resource Development and Technology Committee meetings; Board composition; information regarding LSC funding per sequestration; information regarding Attorney General foreclosure settlement; changes to LSC policies and procedures per LSC Office of Compliance review; nomination of 2013-2014 Officers and Executive Committee members

Action: None taken.

April 25, 2013 (Telephonic)

Participants: Executive Committee Members: Doug Suits (Presiding); Gregorio Garcia; Patrick Fowler; Carlene Higgins; Clarence Matherson, Jr.; and Jaclyn Tipp. Lillian Johnson (CLS Executive Director).

**Consent Agenda Report
May 1, 2013**



*Community Legal Services is committed to eliminating poverty-based inequities in the civil justice system
by providing high-quality legal advice, advocacy and assistance to low-income Arizonans.*



Agenda: Financial statement for the period ending 03/31/13; proposed 2013 CLS budget; update regarding new landlord for CLS' San Luis Office; updates regarding 2012-2013 Board of Directors Client Services, Human Resource, Nominating, Resource Development and Technology Committee meetings; 2012 annual Board retreat and program conference; recap of 2012-2013 Board term; Executive Director's 2012 evaluation and recap of Executive Director's 2012-2013 activities.

Actions:

- Approved recommendation to the Board regarding 2013 proposed budget. Moved by J. Tipp and seconded by P. Fowler; unanimous.
- Approved changes to CLS' *Cost Allocation Plan* as recommended by LSC Office of Inspector General following 2012 audit. Moved by C. Higgins and seconded by J. Tipp; unanimous.
- Approved changes to 16 policies and procedures (as listed below) pursuant to 2013 LSC Office of Compliance and Enforcement review. Moved by C. Higgins and seconded by J. Tipp; unanimous.
 - *Administrative and Legislative Advocacy*
 - *Alien Eligibility*
 - *Appeals*
 - *Class Actions*
 - *Dues*
 - *Eligibility*
 - *Emergency Procedures*
 - *Fee-Generating Cases (with Fee Generating Case Request Form)*
 - *LSC Case Disclosure Semi Annual Reporting Procedures*
 - *Outside Employment; Outside Practice of Law*
 - *Plaintiffs' Statements*
 - *Prohibition on Cases Related to Redistricting*
 - *Prohibitions Regarding Welfare Reform Activities*
 - *Representation on Cases Involving Assisted Suicide, Euthanasia and Mercy Killing*
 - *Restrictions on Advocacy*
 - *Solicitation of Clients*
- Approved Nominating Committee recommendations for 2013-2014 Board term as set forth below. Moved by P. Fowler and seconded by J. Tipp; unanimous.
 - Officers
 - Anne Chapman, President
 - Victoria Beckman, Vice President
 - Robert Pastor, Treasurer
 - Clarence Matherson, Jr., Secretary

- Douglas Suits, Immediate Past President
- At-Large Members
 - Carlene Higgins
 - Liza Lagaña-Merrill
 - Stefanie Layton
 - Jaclyn Tipp
 - Susan Trujillo
- Approval of new lease agreement for San Luis Office space (845 East B Street, Suite 1, San Luis, Yuma County, Arizona 85349). Moved by J. Tipp and seconded by C. Matherson; unanimous.
- Approval of Executive Director's 2012 evaluation results and recommendations. Moved by C. Higgins and seconded by J. Tipp; unanimous.

III. Financial Statement/Journal Entries for Period Ending 03/31/13 (V. Beckman)

IV. Oral Advocacy Report (G. McKay)

ELIGIBILITY

Eligibility for legal assistance from Community Legal Services requires a determination that (1) applicant is financially eligible for CLS' services; (2) the legal problem falls within the priorities as approved by the CLS Board of Directors and (3) representation of the client would not create a conflict of interest for CLS under applicable provisions of the Code of Professional Conduct.

The Legal Services Act, 42 U.S.C. 2996 et seq., as implemented in the Code of Federal Regulations, 45 C.F.R. 1600 et seq., establishes specific criteria regarding client eligibility, intake and case representation. A copy of the Legal Services Regulations is provided to each new employee and is available to each office of Community Legal Services. In the event of a conflict between LSC regulations and any portion of this policy manual, LSC regulations govern.

Financial Eligibility

A. Definitions

1. **"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. Total cash receipts include:
 - a. Wages and salaries before any deductions;
 - b. Income from self-employment after deductions for business or farm expenses;
 - c. Regular payments from governmental programs for low income persons or persons with disabilities;
 - d. Social security payments;
 - e. Unemployment insurance benefits;
 - f. Worker's compensation;
 - g. Strike benefits from union funds;
 - h. Veterans benefits;
 - i. Training stipends;
 - j. Alimony or spousal maintenance;
 - k. Child support payments;
 - l. Military family allotments;
 - m. Public or private employee pension benefits;
 - n. Regular insurance or annuity payments;
 - o. Income from dividends, interest, rents, royalties or from estates and trust;
 - p. Any other regular or recurring sources of financial support that are currently and actually available to the applicant.

It does not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank or investment; tax refunds; gifts compensation or one-time payments for injuries sustained; other non-cash benefits; nor the first \$2,000 per year of trust income or other distributions received by Native Americans from their tribe.

2. **“Household”** means all persons who reside in the same household and are regularly supported by one another and have regularly made and are making their income and assets accessible to cover ordinary and non-ordinary expenses. This includes couples living together as man and wife (even though they are not) who though not legally required to support on another in fact regularly do so. Minor children or other dependents who are in fact supported by the family unit are to be considered part of the family unit.

3. **“Assets”** under 45 C.F.R. 1611 2(d) are those over which the individual seeking assistance has direct and unfettered access, without having to obtain the consent or cooperation of another person over whom the individual does not have control, and who does not in fact consent or cooperate. Absence of control and access will be presumed in spousal abuse cases. Assets re those which can be readily converted at fair market value to cash in the possession of the individual seeking legal assistance prior to the time that individual needs legal assistance. Net assets, after subtracting all expenses of conversion, including applicable taxes, are those to be considered.

B. Manner of Determining Financial Eligibility

1. **Income**

An applicant must meet the following financial guidelines to be eligible for CLS’ services. The maximum annual income level of CLS clients should be adjusted to the following:

Size of Family	Weekly	Monthly Income	Annually
1	\$276.19	\$1,196.83	\$14,362
2	\$372.85	\$1,615.67	\$19,388
3	\$469.48	\$2,034.42	\$24,413
4	\$566.12	\$2,453.32	\$29,438
5	\$661.06	\$2,864.58	\$34,375
6	\$759.38	\$3,290.67	\$39,488
7	\$856.02	\$3,709.42	\$44,513
8	\$952.63	\$4,128.08	\$49,537
Each Additional Person, Add	\$77.30	\$335.00	\$4,020

Pursuant to 45 C.F.R.1611.7 (a) (1), CLS staff shall make reasonable inquiry regarding sources of income, income prospects, and assets. If there is substantial reason to doubt the accuracy of financial information provided by an applicant for services, appropriate inquiry shall be made to verify information, consistent with the development of and effective attorney-client relationship.

Information furnished to CLS by an applicant for service or client to establish financial eligibility shall not be disclosed to any person who is not employed by CLS in a manner that permits identification of the client, without the express written consent of the client, subject to conditions outlined in the Legal Services Corporation regulations set forth in Grant Assurances Numbers 10, 11, and 12, Section 509(h), P.C. 104-134, 110 Stat. 1321 (1996), and protocol regarding access to information in grant recipients’ files (January 5, 2004).

The maximum annual household income limit for LSC purposes is 125% of the Federal Poverty Guidelines for the year as approved by the Board of Directors. Legal assistance may be provided to an applicant whose annual household income exceeds the LSC limits, if it is supported by other funding and the applicant meets the criteria of the other funding source. An applicant whose gross income is between 125% and 200% of the federal poverty guidelines may be provided legal assistance under the following conditions:

- a) Consistent with the CLS' policies and this part, CLS may determine an applicant whose income exceeds CLS' applicable annual income ceiling to be financially eligible if the applicant's assets do not exceed CLS' applicable asset ceiling established pursuant to 45 C.F.R. §1611.3 (d)(1);
- b) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount;
 - i. The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families; or
 - ii. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities.
- c) The applicant's income does not exceed 200% of the applicable Federal Poverty Guidelines amount and CLS has determined that the applicant should be considered financially eligible based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household;
 - i. Current income should take into account seasonal variations and other fluctuations in the applicant's annual income;
 - ii. Unreimbursed medical expenses and medical insurance premiums;
 - iii. Fixed debts and obligations;
 - iv. Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
 - v. Non-medical expenses associated with age or disability;
 - vi. Current taxes; or
 - vii. Other significant factors that CLS has determined affect the applicant's ability to afford legal assistance.

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.

If an applicant's income exceeds 200% of Federal Poverty Guidelines for the year as approved by the Board of Directors, legal assistance may be provided to an applicant seeking assistance to maintain benefits provided by a governmental program for low income individuals or families, or dependent upon the information received by the Executive Director or his/her designee, that the applicant's income is primarily committed to medical or nursing home

expenses and that, excluding such portion of the applicant's income that is committed to medical or nursing home expenses the applicant would otherwise be financially eligible for services.

2. Assets

Assets which are to be considered in determining eligibility are those the applicant has access to and can be readily converted to cash. Only the equity value of the assets is to be considered. Certain assets are exempt. These include:

1. The applicant's principal residence (*see* 45 CFR § 1611.3(d)(1));
2. Vehicles used for transportation (*see* 45 CFR § 1611.3(d)(1));
3. Assets used in producing income (*see* 45 CFR § 1611.3(d)(1));
4. The applicant's homestead (*see* Arizona Revised Statutes § 33-1101);
5. Up to \$4,000.00 in household furniture, furnishings and appliances (*see* Arizona Revised Statutes § 33-1123);
6. Food, fuel and provisions (*see* Arizona Revised Statutes § 33-1124);
7. Personal items including, but not limited to, up to \$500.00 in clothing, up to \$250.00 in musical instruments, up to \$500.00 in domestic pets, etc. (*see* Arizona Revised Statutes § 33-1125);
8. Money benefits or proceeds including, but not limited to, up to \$20,000.00 in survivor's benefits, retirement accounts, etc. (*see* Arizona Revised Statutes § 33-1126);
9. School equipment (*see* Arizona Revised Statutes § 33-1127);
10. Fire fighting equipment (*see* Arizona Revised Statutes § 33-1128);
11. Public property or property of a public character (*see* Arizona Revised Statutes § 33-1129);
12. Tools and equipment used in a commercial activity, trade, business or profession (*see* Arizona Revised Statutes § 33-1130); and
13. Disposable earnings, pursuant to the calculation outlined in Arizona Revised Statutes § 33-1131(B), (C) and (D) (*see* Arizona Revised Statutes § 33-1131).

****Pursuant to Arizona Revised Statutes § 33-1132, notwithstanding any agreement to the contrary, a waiver of the exemptions cited in Nos. 4 through 13 shall be void and unenforceable, except as specifically provided in Arizona Revised Statutes § 33-1122, and when done with notice.****

The maximum allowable in assets is \$5,000 for the applicant and an additional \$1,000 per household member to a maximum of \$10,000. All real property that is not the applicant's primary residence is presumed to be readily convertible to cash and must be taken into consideration in determining the applicant's eligibility.

If the applicant's income is derived solely from either TANF, Supplemental Security Income (SSI) or the entire household is eligible for Supplemental Nutrition Assistance Program no further information need be gathered regarding the household's assets and is considered automatically asset eligible.

Exceptions

The Executive Director or designee may grant waivers of the assets ceiling in unusual circumstances. When the Executive Director or designee grants a waiver, the decision shall be documented and included in the client's file. The program will develop procedures, consistent with the attorney-client privilege and requirements of the Code of Professional Responsibility, to maintain records of the number of clients served because of a waiver and the factual bases for the decisions to grant said waivers.

If an eligible client becomes ineligible through a change in the client's financial circumstances, CLS 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 clients whose continued representation is supported by LSC Funds. If an advocate desires to continue representation of a client whose representation was originally supported by LSC Funds and who now is ineligible to be represented with those Funds, written permission must be secured from the Executive Director.

If an eligible client becomes ineligible through a change in the client's status (i.e., becomes incarcerated, changes alienage category), the client's advocate, in consultation with the Litigation Director, shall take steps consistent with applicable rules of professional responsibility and any court involved, to withdraw, CLS shall continue its representation while continuing reasonable efforts to obtain substitute counsel.

3. Group Representation

CLS may provide assistance to a group, corporation, association or other entity if the entity provided information showing that it lacks, and has no practical means of obtaining funds to retain private counsel and:

1. The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or
2. The group has a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance sought relates to such activity.

In order to make a determination that a group, corporation, association or other entity is eligible for legal services as required by LSC regulation §1611.6, CLS will consider the resources available to the group, including the group's income and income prospects, assets and obligations and either:

1. For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or
2. For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought related to such activity of the group.

CLS shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria above. The eligibility requirements apply only to legal assistance supported by funds from LSC, provided that any legal assistance provided by CLS, regardless of the source or funds supporting the assistance, must be otherwise permissible under applicable law and regulations.

PLAINTIFF'S STATEMENTS

Whenever CLS files a complaint in a court of law, initiates or participates in litigation against a defendant, or engages in pre-complaint settlement negotiations, the responsible attorney must obtain a "plaintiff's statement" as described below.

A. Applicability

1. To plaintiffs only. Therefore, no statement is necessary if CLS' client is an actual or potential defendant (as in an eviction proceeding), even if the client has a counterclaim.
2. To court litigation and pre-court litigation. It does not apply to administrative proceedings.
3. To pre-filing negotiations. If you are conducting negotiations as a way of resolving a matter prior to filing a lawsuit, you must obtain a plaintiff's statement prior to conducting the negotiation. You do not provide the statement to the party (ies) with whom you are negotiating. You do not need a plaintiff's statement if you are simply seeking information or conducting a factual investigation in order to determine whether advocacy on behalf of the client is appropriate.
4. No statement is necessary in cases in which the advocate is only providing brief service.

B. Contents of the Statement

1. An enumeration of the particular facts known to plaintiff supporting the complaint.
2. The date of the statement.
3. The identity of each represented plaintiff by name, or in a separate notice. When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations with a prospective defendant on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

- a. Verify the identity of each plaintiff represented by name in any complaint it files, or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented.
4. The signature of the plaintiff.
 5. The statement should be in English and, if necessary, in a language other than English that the plaintiff understands.

A verified complaint will satisfy the statement requirements if the client understands English. CLS lawyers are encouraged to use verified complaints as their plaintiff statements since the document is or will be public. A short, written, and signed factual summary of facts necessary to demonstrate the existence of a good faith, non-frivolous dispute (i.e., with sufficient facts to satisfy notice pleading requirements) should be prepared for prepared for pre-complaint settlement negotiations if no complaint has been prepared. It is not necessary to include every fact which might support the claim, or every relevant piece of information. Make sure that there are no client confidences in the document.

C. Emergencies

Where the attorney reasonable believes that delay is likely to cause harm to a significant safety, property, liberty or interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter.

D. Disclosure of Statement

The statements are to be kept in the client files. Office/unit managers must keep a separate "Plaintiff s Statement" file and a copy of each plaintiff's statement should be kept in the manager's file.

NOTE: The statements are to be made available upon request to LSC or to any Federal monitors or auditors. Office managers who receive such a request should notify the Litigation director or Executive Director of the request before complying. The statements are not to be provided to courts, attached to complaints or give to opposing parties or counsel. Although the regulation states that the requirement is not intended to give any other party a right of

access to the statement, and that access by other parties is governed solely by the discovery rules of the court in which the action is pending, disclosure of the statement to the third party monitor or to LSC may abrogate any privilege which might otherwise attach to the document. Therefore, it is vitally important that no privileged or confidential information be included in the statement.

E. Identification of Plaintiffs in Complaint/Negotiations

In all complaints filed by CLS, the plaintiff must be identified. If such identification poses a threat to the health or safety of the plaintiff, CLS lawyers should consult with the Litigation Director. Under such circumstances, CLS may have to apply to a court for an Order protecting disclosure of such information, based on a determination that serious harm would probably result from disclosure. The identity of all plaintiffs represented by CLS and on whose behalf negotiations are conducted shall be disclosed to prospective defendant in pre-litigating negotiations, unless the above-described protective order is first obtained.