



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

California Rural Legal Assistance
Case Service Report/Case Management System Review
October 17 - 28, 2011

Recipient No. 805260

I. EXECUTIVE SUMMARY

Finding 1: CRLA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded; however, the recipient should remove the automatic feature that resets the open date to the current date upon reopening of a case.

Finding 2: CRLA's intake procedures and case management system generally support the program's compliance related requirements, though some improvements in the recordation of eligible alien status and the process used to qualify over-income applicants were warranted.

Finding 3: Sampled cases evidenced substantial compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Finding 4: Sampled cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced compliance with the restrictions in 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, improvements in fulfilling the documentation requirements of that regulation are necessary.

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).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (Priorities in use of resources).

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

Finding 10: CRLA's application of the CSR case closure categories is not consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 19 instances of case closure errors identified within the sampled files.

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

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

Finding 13: Review of the recipient's policies and interviews with staff attorneys reveal that CRLA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). Two (2) cartoons political in nature were found to be displayed in the waiting area of a CRLA office; however, CRLA has remedied this matter.

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

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

Finding 17: CRLA is in substantial compliance with 45 CFR § 1614.3 (d)(3) which requires oversight and follow up of Private Attorney Involvement ("PAI") cases. Moreover, CRLA is in substantial compliance with 45 CFR § 1614.3(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities.

Finding 18: CRLA 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 and 45 CFR § 1627.2(b)(1) which requires LSC approval of payments made to attorneys in excess of \$25,000.00.

Finding 19: CRLA is in compliance with 45 CFR Part 1635 (Timekeeping requirements) which requires that attorneys and paralegals who work 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. Individual time reporting needs to be improved.

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

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

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

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

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

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

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

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

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

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

Finding 30: CRLA 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.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

Finding 32: A limited review of CRLA's internal control policies and procedures demonstrated that the program's policies and procedures compare are sufficient to meet the requirements with the elements outlined in Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2.

II. BACKGROUND OF REVIEW

From October 17 to 28, 2011, the Office of Compliance and Enforcement ("OCE"), conducted a Case Service Report/Case Management System ("CSR/CMS") review of California Rural Legal Assistance ("CRLA"). 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 eight (8) attorneys, one (1) management analyst, and two (2) fiscal analysts.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that CRLA has correctly implemented the 2008 CSR Handbook.¹ Specifically, the review team assessed CRLA for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 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);² 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); former 45 CFR Part 1642 (Attorneys' fees)³; 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 CRLA's management, staff attorneys, and support staff. CRLA's 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.

¹ In the initial draft report, the references made to the "CSR Handbook" were to the "2008 CSR Handbook" which was in effect during the period of review. Since that time, the 2008 CSR Handbook has been amended and is now referred to as "the CSR Handbook (2008 Ed., as amended 2011)." For the sake of clarity and continuity, we are retaining the references to the 2008 CSR Handbook, although reference can easily be made to the CSR Handbook (2008 Ed., as amended 2011). There are no substantive changes in the CSR Handbook which are being applied retroactively. As explained in the introductory note to the CSR Handbook (2008 Ed., as amended 2011), there were four (4) changes made to either clarify a point or to eliminate an obsolete reference.

² In addition, when reviewing files with pleadings and court decisions, compliance with other regulatory restrictions was reviewed as more fully reported *infra*.

³ 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.

The sample case review period was from January 1, 2009 through July 15, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed 1,168 cases.

CRLA currently provides legal services to eligible clients in the following counties in California: Colusa, Imperial, Kern (northwest portion), Madera, Monterey, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara (Gilroy and Morgan Hill Area), Santa Cruz, Sonoma, Stanislaus, Sutter, Ventura, and Yuba. CRLA provides client services at 21 offices located in the cities of Coachella, Delano, El Centro, Fresno, Gilroy, Lamont, Madera, Marysville, Modesto, Monterey, Oceanside, Oxnard, Paso Robles, Salinas, Santa Barbara, Santa Cruz, Santa Maria, Santa Rosa, San Luis Obispo, Stockton, and Watsonville. The administrative office of the program is located in San Francisco.

CRLA's Basic Field Grant for 2011 was \$5,313,665; the Migrant Grant for 2011 was \$2,913,644. In its submission to LSC, the program reported 9,893 closed cases in 2010. CRLA's 2010 self-inspection certification revealed a 1.85% error rate in CSR reporting.

By letter dated June 16, 2011, OCE requested that CRLA provide a list of all cases reported to LSC in its 2009 CSR data submission (closed 2009 cases), a list of all cases reported in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed between January 1, 2011 and July 15, 2011 (closed 2011 cases), and a list of all cases which remained open as of July 15, 2011 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by CRLA staff and the other for cases handled through CRLA's PAI component. CRLA 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). CRLA 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.

CRLA indicated that state rules would prevent the requested disclosures and it would like to explore alternative arrangements. Subsequently, CRLA and LSC reached an agreement and CRLA has provided to LSC a list of cases in which, in lieu of the client's full name on the case lists, a unique client identifier ("UCI") and the program's file number for each case. CRLA and LSC agreed upon an UCI comprised of an alpha-numeric combination that contains a birth date based calculated number, the first letter of the last name, and the first letter of the first name.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2009, 2010, 2011 closed, and 2011 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 CRLA agreement of October 12, 2011, CRLA 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.⁴

CRLA's management and staff cooperated fully in the course of the review process. As discussed more fully below, CRLA was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as members of CRLA's Senior Leadership Team, and the Executive Director, of any compliance issues uncovered during case review.

At the conclusion of the visit, on October 28, 2011, OCE conducted an exit conference during which CRLA 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 CSR § 1611.9 (Retainer Agreements), and adherence to CSR Handbook (2008 Ed.). Non-compliance was noted with respect to compliance with 45 CFR § 1626.6 (Verification of citizenship) and Chapters VIII and IX (Case closure categories) of the CSR Handbook (2008 Ed.).

On April 24, 2012, OCE issued a Draft Report to CRLA and provided an opportunity to comment. On July 24, 2012, CRLA submitted its comments and supporting documentation, a copy of which (the "CRLA Response") will be appended to this report. Based on CRLA's comments, modifications have been incorporated in the Draft Report, which is now issued as this Final Report. It should be noted that because of these changes to the Draft Report, the page numbering mentioned in the CRLA Response varies slightly.

⁴ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

III. FINDINGS

Finding 1: CRLA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded; however, the recipient should remove the automatic feature that resets the open date to the current date upon reopening of a case.

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.), § 3.1.

CRLA utilizes LegalServer as its ACMS, after upgrading from Kemps in 2005. LegalServer is a web-based system which allows staff access from any location with an internet connection, using Secure Sockets Layer encryption. LegalServer includes integrated eligibility determination, tracking, timekeeping, document management and customizable report generation features. Some CRLA offices have begun utilizing some of the more advanced features of LegalServer, including the attachment of scanned documents to the case record.

During the first steps of data entry, the ACMS prompts a program-wide conflict check and identifies whether the individual is a current or former client, thereby reducing the potential for duplicate case records. Specifically, the intake staff members initially check for the presence of conflicts during the intake process. Attorney staff members review any potential conflicts identified by intake staff members. CRLA obtains confidential information on the paper intake form, and will check for the presence of conflicts when the information is being entered into ACMS. Thus, CRLA checks for conflicts after obtaining confidential information. A best practice would be to pre-screen for the presence of conflicts prior to the applicant completing the paper intake. In response to the Draft Report, CRLA has revised its intake form to more closely follow the CMS screen; *see* CRLA Response at 37.

The Administrative Director of Training, Technology & Other Support, based in Stockton, is responsible for LegalServer training, data management, and daily administration. The Administrative Director, a CRLA employee for 36 years, is very knowledgeable about the software's capabilities and LSC requirements.⁵ She regularly runs a variety of pre-programmed oversight reports aimed at identifying errors or contradictory data entered into LegalServer, and

⁵ She advised that she is retiring in Spring 2012. An Administrative Legal Secretary, based in Marysville, has been selected to replace her. A formal training and transition period is planned. The new Technology supervisor will begin training in January 2012 and will have the benefit of learning the Self-Inspection and CSR generation process prior to the current Administrative Director's retirement. In response to the Draft Report, CRLA noted additional developments since the issuance of the Draft Report. *See* CRLA Response at 2.

conducts a more rigorous review of case data prior to submission of CSRs to LSC, meeting the requirements of the CSR Handbook (2008 Ed.), § 3.4.⁶

Interviews confirmed that staff have been well-trained on the ACMS. The Administrative Director holds weekly WebEx trainings with the program's Administrative Legal Secretaries and immediately brings to the attention of staff any issues identified during data oversight. Staff further stated that the Administrative Director is accessible for assistance as needed. In addition to the oversight conducted by the Administrative Director, a list of current cases is displayed on each case handler's home screen when they sign-in to the ACMS. Staff in each office have also been trained to generate a variety of other case lists.

CRLA has implemented several methods to ensure that non-reportable events are excluded from CSRs.⁷ Primarily, LegalServer intuitively determines LSC-eligibility based upon the information entered into a case record. This determination is based upon data entered into a number of fields including income, assets, and citizenship status. Nevertheless, there are certain circumstances in which staff are permitted to override the determination, for example if staff have documented income exceptions set forth in the regulation and program policy. In addition, cases can be closed with one of two "Lost LSC Credit" closure codes, Q (untimely) or R (missing documents, signature, assets or income).⁸ As per the intake form and interviews, when closing untimely cases with Q, staff are instructed to use a date of 12/31 for the year in which the case should have been closed. This practice complies with guidance from LSC during CSR accountability training⁹ and provides further safety that an untimely closed case will not get reported in CSRs as only cases closed in a current year will be included in that given year's CSRs.¹⁰ Last, a data entry event can be coded as a *Reject* in the disposition field. A *Reject* code is assigned largely for ineligible applicants that are reported to LSC as matters. These practices comply with the CSR Handbook (2008 Ed.). Non LSC-reportable cases were reviewed that had

⁶ The CSR Handbook § 3.4 requires programs to institute procedures for ensuring management review of case service information for accuracy and completeness prior to its submission to LSC.

⁷ The CSR Handbook (2008 Ed.) § 3.5 requires programs to establish a method in their case management systems that will deselect case files for CSR reporting purposes.

⁸ During interviews with some staff, the R closure code was referred to as a reject code, raising concern that the program was coding as a reject cases which were initially eligible and accepted, which is prohibited by the CSR Handbook (2008 Ed.), § 3.5. This concern was alleviated during an interview with the Administrative Director during which she stated that the R closing code is not a reject and cases are rejected through an alternate mechanism. She acknowledged some confusion by staff because both begin with the letter R and stated that she chose R as the closing code because it follows Q. She stated that this is an issue that she has and will continue to reinforce during training.

⁹ The CSR Handbook (2008 Ed.), § 3.3 sets forth timely closing of case requirements, which require, with some exceptions, programs to report cases as having been closed in the year in which assistance ceased.

¹⁰ It is noted that a review of the case lists reveal that in practice many of the cases closed with Q were not closed with a 12/31 date. This appears to be an oversight on the part of staff. While consistency across the program is the best practice, as a practical matter the untimely cases will be excluded from CSRs either due to the use of the Q code, the 12/31 previous year's date, or both. The previous year's date serves to provide an additional safeguard to ensure cases ineligible for CSRs are not reported to LSC.

been properly deselected from inclusion in 2011 CSRs, demonstrating the effectiveness of CRLA's systems.¹¹

Certain office case lists submitted by CRLA in response to LSC's pre-visit document request contained cases closed with Q or R. Prior to the review, OCE requested lists of cases reported to LSC in its 2009 and 2010 CSR data. Interviews revealed that during the preparation of the lists, the Q and R closed cases were not filtered from the data query for certain offices. This was an unintentional error as a result of the volume of lists required for each of CRLA's offices. Accordingly, there is reasonable assurance that these cases were not reported to LSC.¹²

LegalServer was assessed for defaults in fields that are critical to the determination of eligibility. Pursuant to Program Letter 02-6 and the CSR Handbook (2008 Ed.), § 3.6, a program's ACMS is prohibited from having a default in income, assets, number in household, citizenship/eligible alien status, and LSC-eligibility, to definitively demonstrate that an inquiry was made with respect to those eligibility-dependent fields. At the beginning of the two week visit, during a test of the system, a default to "no" was identified in the field capturing income prospect data during a test of the system. However, by the conclusion of the visit, during another test, this default was not present and, accordingly, no additional action is required. No other defaults in critical eligibility determination fields were identified.

One issue of concern was identified with LegalServer.¹³ When cases are reopened in the ACMS, the original open date is automatically changed to the reopen date.¹⁴ Interviews, case review and tests of the system reveal that upon reopening, either for an administrative purpose or if the client returns with the same problem in the same year, the original open date is automatically changed to the reopen date. The details of each reopen occurrence is preserved in the record and

¹¹ See, for example, the following six (6) cases: Case No. 10-0275168, Case No. 11-0289069, and Case No. 08-0231144 (these three (3) cases were over-income or not screened for income, funded by non-LSC funding sources which lack or have higher financial eligibility requirements); Case No. 10-0279691 and Case No. 09-0256909, (these two (2) LSC-funded cases were untimely closed); and Case No. 09-0262171 (this non-LSC funded case lacked documented legal assistance). These cases are cited in passing as examples only and are not a list of all the deselected files which were reviewed during the on-site review.

¹² In addition, there was one (1) file on the case lists provided by CRLA which was an artifact which showed up as being an open case file, when it had been closed many years earlier. See Case No. 00-43001707. It is believed that this happened during the conversion from Kemps to LegalServer.

¹³ In response to the Draft Report, CRLA explained that it has taken several corrective actions; for a complete discussion, see the attached comments.

¹⁴ Because there were numerous instances found during the review of this, all files found are not listed. Nevertheless, the following examples should be sufficient: Case No. 08-0236483 (printout lists case as opened on December 31, 2009; actually opened on August 21, 2008); Case No. 08-0236041 (printout list case as opened on April 19, 2010; actually opened on August 20, 2008); Case No. 09-0253641 (printout lists case as opened on January 20, 2009; actually opened on January 14, 2008); and Case No. 10-0270279 (printout lists case as opened on February 28, 2011; the case was actually opened on February 2, 2010). See also, for example, Case No. 04-50001030 (the intake date was February 4, 2004, acceptance date was February 17, 2004, and the closing date was February 5, 2004); Case No. 06-0202241 (open date recorded in file was November 15, 2009, while open date recorded in the ACMS was 8-3-11); and Case No. 04-48002116 (inconsistent open and close dates. The open date recorded in the file was August 10, 2004, while the open date recorded in ACMS was August 2, 2011, and the closing date recorded in the file was August 10, 2004, while the closing date recorded in ACMS was March 1, 2011).

printed out in case notes; however, the accurate date that the case was opened is not preserved in the open date field. The result of this is that extended service cases may appear to be open for only one or two days, when they were in fact open for months before the reopen date. A more troubling result of this feature is that it could also inadvertently cause a case to be reported in two different years.¹⁵ One such case was identified during the case review.¹⁶ The case was opened in 2009 and closed September 24, 2010 with an Extensive Service code. It is listed on the 2010 Stockton PAI Closed case list signaling that it was reported to LSC in 2010 CSRs. During case review it was determined that the case had been administratively reopened and closed on September 2, 2011, which could indicate that the case would again be reported as Extensive Service in 2011, without any new work in 2011. Because the affected year is 2011, which has not been reported, it is possible that the program's internal review procedures would identify this case and otherwise exclude it, though the concern is that reporting the same case in two years could occur. While only one such case was identified in my review, others are likely to exist. To address these concerns and ensure the accuracy of case list data, this automatic feature should be removed to preserve the original open date.¹⁷ This issue was discussed at length with the Administrative Director. She stated that this issue was self-identified by staff and she has been working to correct the issue; she anticipates implementation of a fix in the near future.

On the other hand, if a file has been properly closed and reported in one year and the client reappears and applies for legal assistance again in the future, that new application should sometimes be considered as a new case file for CSR purposes.¹⁸ The Draft Report indicated that CRLA should review the re-opening practices of staff, and its ACMS programming protocols, so that that cases are re-opened consistent with CSR Handbook (2008 Ed.) and other applicable laws and authorities.¹⁹

One other minor issue was identified – several cases selected for review lacked an opening date.²⁰ During an interview with the Administrative Director, it was determined that while it is not possible to open a case without an open date, it is possible for a staff member to back-space through the fields and inadvertently delete the date. The notes in the record maintain the timeline of the case and accordingly the open date is preserved. Based upon the interview, it is

¹⁵ Programs are required to ensure that cases involving the same client and same legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed.), § 3.2.

¹⁶ *See* Case No. 09-0257778.

¹⁷ As noted in the CRLA Response to the Draft Report, CRLA met with the vendor of LegalServer to make modifications to the system. In the meantime, CRLA added a “Disposition Log” to the case profile with reports the case disposition including the original date opened, original dated closed, the date re-opened and so on. *See* the discussion in the CRLA Response at 2-3.

¹⁸ The CSR Handbook instructs that if a case is closed and reported in one (1) calendar year, and the client returns for additional services in a subsequent calendar year, the additional services must be reported as a separate case in the subsequent year, provided that the case otherwise meets the requirements and the definitions in the regulations, CSR Handbook and other applicable laws and authorities. *See* CSR Handbook (2008 Ed.), § 6.3.

¹⁹ As noted and discussed by CRLA in its response to the Draft Report, it has taken a number of steps to ensure effective case management. CRLA’s short term response was to lock the ACMS, so that only the Administrator could reopen a case. For a more long-term solution, CRLA has met with the vendor of the ACMS to overhaul the system and has maintained a log of changes. *See* Item 1 of the Required Corrective Actions at the end of this report for a more thorough explanation and the CRLA Response at 2-3. Both solutions seem to be efficacious.

²⁰ *See*, for example, Case No. 09-0260727, Case No. 11-0284125, and Case No.08-0230868.

likely that such an omission would be identified and corrected during management oversight review.

Based on interviews and a comparison of the information yielded by the ACMS to information contained in the case files sampled, CRLA's ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. As noted in the Draft Report, the sole concern was the inconsistencies attributable to the reopening issue discussed above. Based on the materials and comments provided in response to the Draft Report, we find that CRLA is addressing the concerns.

Finding 2: CRLA's intake procedures and case management system generally support the program's compliance related requirements, though some improvements in the recordation of eligible alien status and the process used to qualify over-income applicants were warranted.

On each subteam of the review, one of the OCE reviewers was assigned to assess intake in each of the offices visited, each of which conduct in-person and telephone intake, and some of which conduct intake at outreach locations or in clinic settings. Support staff, case handlers, and Directing Attorneys ("DAs") were interviewed, and written and electronic documents were reviewed for compliance. These efforts revealed that although intake is decentralized, the eligibility screening process is standardized, with minor procedural variation depending upon office staff size and whether the applicant is seeking basic or migrant farmworker services. CRLA's intake procedures and case management system generally supports the program's compliance related requirements, though some improvements in the recordation of eligible alien status and the process used to qualify over-income are warranted.

Model

All offices reviewed, including the Paso Robles and Lamont satellite offices, generally follow the same intake model. Offices have hours ranging from normal office hours four (4) days per week to limited hours in the morning or afternoon on specific days.²¹ Emergency intake is conducted during non-intake hours, as necessary. All offices conduct telephone and in-person intake, to varying degrees.

Applicants contacting CRLA are asked by support staff about the nature of their legal problem.²² If the problem appears to fall within program priorities, in-person applicants are provided a written intake form to be completed by the applicant with assistance by support staff if necessary.²³ If applying by telephone, support staff asks questions and records the information

²¹ One day is set aside for case review and the offices are closed to the public unless there is an emergency.

²² The office Secretary is the primary staff person responsible for collecting eligibility data, with the Administrative Legal Secretary providing back-up.

²³ Most support staff is authorized only to screen out issues that are clearly not handled by CRLA, such as criminal issues. Individuals with such issues are provided referrals.

(This footnote is continued on the next page.)

on the written intake form.²⁴ Support staff records the 125% and 200% ceiling levels for the household size and, flag the application if it is over 200%. If income is between 125%-200%, support staff either completes a Supplemental Intake form, which documents the exceptions to the 125% MIL, or turns it over to an attorney to complete.²⁵

As will be discussed below, most intake staff members were familiar with the “Government Exemption” policy pursuant to 45 CFR § 1611.4(c), but screened for assets nonetheless.²⁶

The form contains a citizenship attestation. If an in-person applicant does not sign, the applicant’s status is reviewed by support staff, a Community Worker or an attorney, depending upon local office practice. If eligible, some offices copy the status document; others record the information on the reverse side of the written intake form. If applying by telephone, support staff inquires whether the applicant is a citizen and, if so, records it in a telephone intake box on the form. If not a citizen, support staff in some offices does not ask additional questions, leaving the box blank and passing the application along to other staff for screening. Some concerns with this process are discussed below. Support staff are responsible for ensuring that the form is completed and the information is clear, and for entering the information into the ACMS. Their role is to collect eligibility information; they are not responsible for determining eligibility.

Eligibility Determination

There is some variation in the next steps of the intake process, depending upon the size of the office and whether there are migrant farmworker staff based in the office. In most offices applications are held till the next weekly case review meeting.²⁷ If an applicant has an issue which cannot wait until case review, it is flagged for the Directing Attorney’s consideration. In larger offices, however, attorneys are assigned as Attorney of the Day or Attorney of Week. They are responsible for reviewing applications, determining eligibility, and interviewing the applicant either at the time of the initial in-person contact, a scheduled appointment at a later date, or by telephone. In this scenario, cases may be resolved with advice or considered for additional assistance during the case review meeting.

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In the Gilroy office, the process is slightly different – the staff will have the applicant complete the paper intake form or complete it for the applicant over the telephone. An interview appointment will then be scheduled. During this appointment, the paper intake form will be reviewed with the applicant, and entered into ACMS. If the applicant does not appear for the interview, the paper intake form is discarded, and not entered into ACMS. Thus there is no record that CRLA has obtained confidential information from the applicant.

²⁴ Both the Salinas and Delano office limit their inquiry into an applicant’s income to the income sources listed on the paper intake form.

²⁵ However, the Madera and Lamont offices report that they would consider the applicant’s legal problem to determine whether to approve the acceptance of an over-income applicant- which is not consistent with CRLA policy or LSC regulation. They further indicated they would request approval from the Executive Director for all over income cases, which should cure any defect.

²⁶ The Delano office applies the Government Benefits Exemption and does not screen for assets in exempt cases.

²⁷ The Santa Barbara office, staffed with only one (1) attorney plus law students, holds meetings every two (2) weeks.

Offices with migrant farmworker staff route applicants to Spanish speaking community workers or attorneys. In Oxnard, which houses both Basic Field and Migrant staff with different Directing Attorneys, Basic Field applications and Migrant farmworker applications are processed in a different manner. Applications for Basic Field issues are obtained by the Secretary and held for the case review meeting unless there are time considerations. Applications for migrant farmworker issues are reviewed by the Administrative Legal Secretary, who is a Spanish speaker. If there are incomplete responses or questions regarding clarity, the Administrative Legal Secretary speaks to the applicant. The applicant then meets with one of two bilingual Community Workers who review each application line by line with the applicant. The Stockton office has two migrant attorneys who take turns serving as Attorney of the Week for farmworker issues. They assess completed applications and determine whether to hold it for case review or contact the applicant immediately. Lastly, applicants to some offices may be referred to a clinic. In Stockton and Modesto, applicants with landlord-tenant issues may be referred by Support Staff to CRLA's Landlord-Tenant and Small Claims Pro Per Assistance Project in the local courthouses. These clinics are intended to only provide legal information; therefore intake screening is not conducted. Individuals identified as potentially eligible and needing legal assistance are given a written referral to the office.²⁸ In Santa Barbara, Marysville, Stockton and Santa Rosa, applicants may be referred to regularly scheduled clinics. *See* Discussion below.

All applications for the week are reviewed during weekly case review meetings, regardless of whether they have been previously addressed during the week as emergencies or by Attorneys of the Day/Week.²⁹ Eligibility is assessed during the meeting. Eligible alien documentation is reviewed and, if the applicant's income is between 125%-200%, the Supplemental Income form is reviewed and approved by the Directing Attorney. Some inconsistency amongst offices was identified with regard to this process and is discussed below. Cases are either rejected, closed based upon previous actions, accepted or determined to need additional information. In some offices there are other options.

Persons who are undocumented or otherwise ineligible are interviewed by a case handler to get information sufficient to provide an appropriate referral. All staff interviewed in this regard stated that they only obtain information regarding the person's legal problem and use that information to make a targeted referral. They stated that they do not provide any legal assistance.

Affirmative Litigation Approval

For every case that would require affirmative litigation, every attorney has to prepare and submit a Litigation Assessment Plan ("LAP") before filing a complaint. The LAP is initially submitted to the Directing Attorney for guidance and approval and then to the proper Director of Litigation, Advocacy and Training ("DLAT") for final approval.³⁰ The preparation and approval of that plan

²⁸ The Stockton clinic is staffed by an attorney and the Modesto clinic by at least one (1) paralegal.

²⁹ For those files in which legal assistance is provided prior to the weekly meeting, the attorney reviews the applicant's information and makes a determination that the applicant is eligible for assistance prior to providing assistance.

³⁰ At the time of the review, CRLA had four (4) DLATs.

involves an exhaustive analysis of multiple aspects of the contemplated litigation including: the name of the case; brief factual summary of the case; courts; goal of the lawsuit; fee generating compliance, if required; whether the case will be co-counseled; relief sought; parties and counsel; liability assessment; potential costs; potential recovery; miscellaneous aspects such as estimated time of the trial, trial alternatives; settlement analysis; name of the CRLA attorney responsible for the case; plaintiff-executed statements of facts; etc. After the LAP is evaluated and approved, the office's Administrative Law Secretary prepares a 1644 report (to be submitted to LSC in accord with 45 CFR Part 1644), which will include, among other things, the name and address of the parties, the title of the lawsuit, the name of the judge, the court address, etc.

Closing and Oversight

In most offices, when an extended service case is ready for closure, the case handler enters closing notes in the ACMS, completes a Case Closing Memo form and selects the closure code. This form was standardized in the offices visited except for Santa Maria, which is using an outdated form containing the closure codes from the previous CSR Handbook. The Case Closing Memo includes a review of the standard compliance items, the basis for the closing code, whether documents have been returned to the client and the client has been notified of the outcome and, finally, the outcome of the case, favorable, unfavorable or mixed, is recorded. Directing Attorneys review cases for closure, either before or after they are closed on the ACMS by the office's Administrative Legal Secretary.³¹ The Administrative Legal Secretary completes a compliance checklist for each closed cases. Closures are entered into the ACMS within a couple of days. The process is the same for limited assistance cases except that a Case Closing Memo is not required. The case closure code is selected from a list on the reverse side of the written intake form. Two exceptions to this process were noted. The newly hired Modesto Directing Attorney does not review all cases upon closure though he stated that he may begin doing so. Also, the Santa Rosa Directing Attorney selects closure codes for all cases in the office, which he admits at times has caused delays in closing files.

As discussed in Finding 1, *supra*, staff have been trained to generate ACMS case reports. During weekly case review meetings, the Directing Attorneys review all incoming intakes for the week. On a periodic basis all cases open in the office are reviewed at case review meetings. Last, as discussed in Finding 1, the Administrative Director of Training, Technology & Other Support conducts regular oversight of the ACMS data.³²

Outreach

Most local offices conduct outreach in their communities. CRLA provides four (4) types of outreach: legal education presentations, legal education and advice clinics, intake outreach, and field inspections:

³¹ The Madera office reviews the closing memoranda rather than the case file.

³² In addition, in response to findings and concerns discussed in the Draft Report, OCE notes that CRLA reported that it has revised its Advocacy Manual to include a specific step at case closing ensuring the Directing Attorney will review paper and electronic information to ensure consistency. *See* CRLA Response at 4-5.

1. Legal Education Presentations: All offices conduct outreach to inform the community about the array of services CRLA offers. Additionally, most offices conduct legal education seminars in the areas of employment law, occupational health and safety, education, health, and housing law. LSC and non-LSC funds support outreach activities. For example, the Monterey office received non-LSC funding to provide local agencies with information concerning the census. The Monterey, Salinas, Delano, and Gilroy use LSC funds to speak to non-profit groups about tenant's rights. The Delano, Fresno, Community Equity Initiative ("CEI"), and Salinas offices travel to labor camps to present legal information to migrant groups. Staff members from the CEI and Salinas offices attend Parent Teacher Organization meetings to provide information concerning educational rights. CRLA frequently appears on the Spanish radio stations, "Bilingua," providing information concerning farmworkers legal rights and may answer housing, health, and employment law questions on a "call in" radio show. CRLA may answer questions; however, they will not provide advice. Any caller who requires legal assistance is referred to CRLA offices to complete an application. As only legal information is provided, there is no eligibility screening conducted. Community workers and attorneys provide outreach services. CRLA accompanies non-attorneys to community education events during the staff member's training period, and then thereafter receives a verbal report concerning the outreach activity. These activities are reported as matters in the Other Services Reports ("OSRs").
2. Clinics: In addition to office intake, a part-time Santa Barbara paralegal conducts outreach intake at *Casa de la Raza*, a family resource center, on Thursday mornings. Appointments are set by the center, though walk-ins are accepted. The paralegal completes the intake form with the applicant. Non-citizen applicants must either show their documentation or bring it to the office before the application will be considered for assistance. The paralegal does not provide legal advice, her role is to collect the eligibility information and bring it back to the office at which point the application proceeds as described above.

The Santa Barbara and Oxnard offices hold an Employment and Labor Law clinic on the third Thursday of each month at *Casa de la Raza*. Each attendee completes a written intake form. Forms are brought back to the office, entered in the ACMS and reviewed at case review meetings. Private attorneys participate in the clinic. The Draft Report noted an apparent conflict and sought clarification, which CRLA has provided. In brief, the concern was whether legal advice or information was provided. As explained in the CRLA response, legal assistance is provided under the supervision of the Staff Attorney following a determination of the applicant's eligibility. See the CRLA Response at 21-22.

The Marysville office operates a series of regularly scheduled clinics on a variety of legal issues. The October 2011 calendar advertised 18 clinics: five (5) Spanish Landlord/Tenant, four (4) English Landlord/Tenant, one (1) Debt/Debt Collection, two (2) Social Security Disability, two (2) Workers Compensation, two (2) Behind on House Payments, one (1) Family Law, and one (1) Community Action Team. A

First Time Homebuyer Workshop clinic was scheduled but subsequently cancelled. Attendees to all clinics except the Community Action Team complete written intake forms.

Clinics follow two (2) models. The Landlord/Tenant, Behind on House Payments, and Debt/Debt Collection clinics are conducted by the Directing Attorney or Staff Attorney on an alternating basis. These are legal information clinics and while all participants complete intake forms, they are not reviewed prior to the clinic. Attendees are shown a video and PowerPoint presentation, after which they can ask general questions. Specifics are not discussed. Staff noted in interviews that both landlords and tenants attend the Landlord/Tenant clinics and it would be impossible to discuss specific legal circumstances. Following each clinic, the intake forms completed prior to the beginning of the clinic are provided to the Directing Attorney who reviews them individually and closes them with the code "Reject/Matters" unless an attendee has an issue requiring legal assistance in which case the application is considered during case review meetings. As a result of the coding "Reject/Matters" those persons who are not accepted as clients at the intake meetings are classified as Matters for reporting purposes.

Private attorneys staff the Social Security Disability, Workers Compensation and Family Law clinics. All attendees receive legal advice, regardless of eligibility, raising concerns that undocumented or otherwise ineligible persons receive legal advice at a clinic that is organized and sponsored by CRLA. These events are recorded as matters or cases depending upon a later determination of eligibility, a practice which violates the CSR Handbook (2008 Ed.), § 2.3, Footnote 11; therefore, this practice must cease. In brief, CRLA acknowledges the aforescibed scenario and proposes to "achieve compliance with the CSR Handbook by abandoning our practice of processing those clinic attendees who meet briefly with private attorneys through our intake and eligibility procedures and then reporting qualified individuals as cases; henceforth, we will simply treat and report all attendees as CSR matters." CRLA Response at 33.

Stockton - Worker's Rights Clinic

On the second Tuesday of each month, the Stockton office holds a Workers' Rights Clinic in its offices. Individuals appropriate for the clinic are identified during case review and assigned an appointment slot at the next scheduled clinic. Attendees must be income-eligible, though undocumented persons are permitted to attend at the discretion of the Directing Attorney. At the clinic, intake forms are signed and eligible alien documentation is reviewed, if necessary. Attendees meet one-on-one with a paralegal or attorney. According to the Directing Attorney, advice is provided unless the person is undocumented in which case only legal information is provided. If legal assistance is provided, the applications are closed as cases; otherwise the applications are closed as matters. On occasion, a volunteer attorney assists with the clinic. Individuals who are scheduled but do not show for their appointment may be rescheduled for an over-flow clinic held on the fourth Tuesday of each month. These

slots are limited and only offered if a no-show calls the program and requests to be rescheduled.

Stockton - Landlord-Tenant/Small Claims Clinic

This is an offsite clinic that is operated at the Stockton Courthouse. The clinic is staffed by an attorney, whose title is clinic coordinator/staff attorney and one (1) volunteer law school intern. The clinic coordinator explained that the clinic serves to provide legal information to individuals regarding unlawful detainers, three (3) day notices to pay or quit, 30 day notice to terminate tenancy, etc. She also indicated that the clinic does not provide any legal advice.

Upon arrival at the clinic, applicants are provided an "Intake Sheet" to complete. The completed sheet is then reviewed by the clinic coordinator and the applicant is provided an informational packet based on his/her legal issue. Individuals who are U.S. citizens or eligible clients may be referred to the Stockton office if actual legal advice is required.

Santa Rosa

The Santa Rosa office holds a bankruptcy and foreclosure clinic, one (1) each per month. Persons contacting the office for assistance with these issues are scheduled for the next clinic. As the date approaches, those scheduled to attend are sent a confirmation letter and a written intake sheet to be completed prior to the clinic.

At the clinic, forms are reviewed for completeness and clarity but an eligibility determination is not made at that time. According to staff, a private attorney (bankruptcy clinic) or the Directing Attorney (foreclosure clinic) present legal information. During the foreclosure clinic, the Directing Attorney gives a presentation on the steps and defenses of foreclosures. During bankruptcy clinics, a private attorney instructs attendees on the bankruptcy process and how to complete paperwork, in a general sense. Persons who wish to have an attorney review their paperwork are screened for eligibility, based upon the completed intake form, and if eligible scheduled for an appointment with the private attorney. Sometimes these meetings are at the program office, sometimes they are held at the private attorney's office. All files are reviewed at case review meetings to determine if an attendee needs legal assistance. If so, eligibility is reviewed. If not, cases are, incorrectly, closed as CSR cases. Incorrect case closing practices resulted in the inclusion of cases which lacked documentation of legal assistance in past CSRs, the program self-identified the error and developed corrective measures.

The Fresno and CEI offices will also conduct community education presentations to migrant and other grass root community groups to educate on a variety of legal topics, most notably, wage claim issues, occupational health and safety, and housing issues. The clinics are scheduled in one (1) of two (2) ways. First, CRLA may be contacted by members of a community experiencing a legal problem. A presentation

may then be scheduled. After the presentation, participants have the opportunity to apply for CRLA services. Legal assistance may be provided by attorney staff after eligibility is determined. Secondly, CRLA may publicize and hold regular clinics to provide legal services to the community. For example, the Fresno office holds monthly wage claim clinics. During these clinics, participants listen to a Power Point presentation providing information about wage claim law. Participants are then given the opportunity to apply for services, and after a full screening, including Part 1626 screening; eligible applicants may receive assistance with their issue. Cases in which participants receive legal assistance are reported in the CSRs.

3. Intake Outreach: CRLA may be contacted by members of a community experiencing a legal problem. Community workers and attorneys agree to meet the individuals experiencing the legal problem to learn about the legal problem. If the legal problem appears to be within the service area and priorities of CRLA, then community workers and attorneys will meet with each member of the community present, and will conduct a full eligibility screening, including Part 1626 screening, on the paper intake form. Conflicts will be screened when CRLA staff returns to the office. Attorneys may provide advice after eligibility is determined. Cases in which individuals receive assistance are reported in the CSRs. Many of CRLA's multi-litigant cases are screened in this manner.
4. Field Monitoring: CRLA receives a grant of \$225,000 from the U.S. Department of Labor's Occupational Safety & Health Administration to conduct field inspections and report violations to California Occupational Safety and Health Administration ("OSHA").³³ In addition, both CRLA and the California Rural Legal Assistance Foundation receive funding from The California Endowment³⁴ to perform this monitoring.³⁵

³³ See the OSHA website for more information: <http://www.osha.gov/SLTC/heatillness/index.html> (last accessed on September 26, 2013).

³⁴ According to its website, The California Endowment is

... a private, statewide health foundation that was created in 1996 as a result of Blue Cross of California's creation of WellPoint Health Networks, a for-profit corporation. This conversion set the groundwork for our mission:

The California Endowment's mission is to expand access to affordable, quality health care for underserved individuals and communities, and to promote fundamental improvements in the health status of all Californians.

See <http://www.calendow.org/Article.aspx?id=134> (last accessed on March 19, 2012). The California Endowment uses similar language on its revised webpage at <http://www.calendow.org/about/overview.aspx> (last accessed on September 26, 2013).

³⁵ CRLA has been involved in this field monitoring for quite some time. For example, in the 2010 Grants Narrative, CRLA explained:

CRLA, California Division of Occupational Safety and Health Standards ("Cal-OSHA") and the California Rural Legal Assistance Foundation, entered into a formal written agreement entitled "Protocol For A

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CRLA conducts field inspections in two (2) ways. First, community workers will conduct weekly “drive by” inspections during growing seasons. Community workers will drive around the fields in their service area to observe the working conditions of farmworkers. If a field lacks sanitation, water, or shade (or other violations of OSHA are present), the community worker will ask permission to inspect the field. The community worker will attempt to educate the field supervisor/grower as to OSHA requirements. If the OSHA requirements are complied with, CRLA will send the grower/supervisor a confirmation letter with educational materials. If the grower/supervisor refuses to speak with the community worker, or indicates s/he will not comply with OSHA requirements, CRLA will inform her/him that it will report the violation to OSHA. CRLA attorneys will send a formal letter to OSHA outlining the violations observed in the field, and copy the grower/supervisor. These activities are documented on a field monitoring form, and reported to the DLAT in charge of compliance. A report is prepared. It appears that these activities are primarily considered matters, but in some instances are reported as cases. CRLA was asked to respond to the Draft Report and explain whether this specific monitoring activity (the “drive by” inspections) are funded with LSC funds; whether any of the cases are reported with the CSRs and, if so, how these become cases without a client.³⁶ In response to this invitation for more information, CRLA has provided a

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Response to Complaints Alleging Violations of Occupational Safety and Health Standards Pertaining to the Agricultural Work Environment" pursuant to a grant from Cal-OSHA. Although not funded in 2008, the partnership has continued its joint efforts to implement "best practices" in enforcement and consistent legal interpretation through coordinated strategies to correct violations of health and safety standards, This partnership also provides (a) a comprehensive multi-media education and outreach effort to address health and safety issues in the agricultural fields, (b) identification of patterns and practices for implementing health and safety practices among the many, distinct crop practices, (c) an expanded regional and state referral lists for workers' compensation attorneys and occupational safety and health medical providers, (d) an increase the number of work-site monitoring visits per year.

At 43-44.

Similarly, in the 2007 Grants Narrative, CRLA stated:

CRLA's proposed goal seeking to ensure that agricultural employers of low wage workers meet the minimum standards for wages and working conditions and comply with state and federal health and safety standards was implemented during 2005 with CRLA reporting and documenting 1,042 field monitoring visits. During the July 1 through December 31, 2005 reporting period, CRLA advocates reported a 54% voluntary compliance rate in instances where they personally observed health and safety violations in the fields or in farmworker housing. In *Ruiz v. Zesasti*, CRLA successfully settled a lawsuit on behalf of tarp cutters and tarp removers in strawberry fields in Monterey County. These tarps were used to cover methyl bromide applications (and sometimes used in conjunction with chloropicrin), i.e., both of which are highly toxic and can cause long-term neurological damage. The employer did not provide these farmworkers with required annual safety trainings or any personal protective equipment to shield them from their work with such dangerous toxics. Pursuant to the settlement, the workers were paid their wages due and safety trainings were conducted by the Department of Pesticide Regulation.

At 58.

³⁶ Although the field inspections and monitoring work appear to be an effective measure to ensure and promote the health and safety at the work place for the farm workers, it is more a law enforcement mechanism than a provision

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detailed explanation. *See* CRLA Response at 37 – 40. In brief, CRLA acknowledged that a substantial portion – but not all –of the field monitoring is supported with LSC funding. It further reports some of these activities as CSRs, closing code K, when the activity is supported with eligible client executed retainers. Finally, it does do some field monitoring in some limited situations when it does not have an individual retainer. As noted above, CRLA has disclosed this in the past to LSC through its funding proposals and CRLA has made a presentation to the LSC Board of Directors on this activity in 2005. CRLA concluded its explanation by stating it welcomes the opportunity to participate in dialog about any further concerns.

At issue is whether LSC Recipients may use LSC funds to provide legal assistance without a client. There is no disputing the efficacy and benefit provided by field monitoring; the concern is that the whole of the LSC Act and subsequent restrictions imposed by Congress indicate that legal assistance may only be provided to those persons who have sought legal assistance and have been properly screened and accepted as clients.³⁷ Moreover, as noted by CRLA, there is no express provision which would bar this activity, as is the case with, for example, organizing activities, grassroots lobbying, or class action lawsuits. LSC is evaluating the issue and its decision will be addressed under separate cover.

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of direct legal assistance, and as such all the time spent and reported as doing such work preferably should be attributable and paid with funds coming from non-LSC funding sources.

³⁷ *See, e.g.,* the LSC Act at 42 U.S.C. §§2996e(a)(1)(A) (“to provide financial assistance to qualified programs furnishing legal assistance to eligible clients”), 2996e(a)(3)(A) (“broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract), Sec. 504. (a)(18) of Pub. L. 104-134, 110 Stat. 1321, H.R. 3019 (April 26, 1996) (“None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a ‘recipient’)— (18) unless such person or entity agrees that the person or entity, and the employees of the person or entity, will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action, and will not refer such nonattorney to another person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Corporation”). *See also*, §504(a)(8), regarding the signed client statement of facts. This is not an exhaustive list, nor does it present provision which might seem to indicate LSC Recipients may provide legal assistance to those who have not directly sought legal assistance (for example, see the definition “‘eligible client’ means any person financially unable to afford legal assistance” 42 U.S.C. §2996a(3) or 42 §2996f(a)(2)(C), which provides, in relevant part, “including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems.”). *Compare* CSR Handbook (2008 Ed., as amended 2011), § 2.4 “Definition of Client:”

For CSR purposes, a client is defined as a person (or group under 45 CFR § 1611.6) who is:

- (a) financially and otherwise eligible to receive legal assistance under the LSC Act, regulations, and other applicable law, regardless of source of funding used by the program; and
- (b) accepted for legal assistance through an intake system or other established program procedure for ensuring client eligibility.

For CSR purposes, to be eligible for and accepted for legal assistance and to be reported as a CSR case, a client must meet the financial (including both income and assets), citizenship (including alien status), and other eligibility requirements of the LSC Act, regulations, and other applicable law.

Second, CRLA selects certain fields to inspect based upon complaints received from the workers in the fields, or other individuals who may have no employment relationship with the fields. These field inspections are performed in the Coachella, Delano, Fresno, Lamont and Oxnard offices. The Coachella, Oxnard, Lamont and Fresno office community workers report that if they receive a complaint about a grower not meeting OSHA requirements, that they will screen this individual through the intake process and then inspect the field.³⁸ The activities are considered matters and cases depending on whether legal information is provided or whether legal assistance is provided. The Delano office reports that it does not conduct intakes when receiving a request to inspect a field for potential OSHA violations, and doesn't know how the activities are reported.

The Fresno office further reported that one (1) central case file with a single case number is opened for all field inspection activities. CRLA opens this case every year under the client "[redacted]," and closes it at the end of the calendar year. CRLA reports it conducts a new eligibility screening every year. All field inspection activities and all field inspection letters that are sent to growers and OSHA are kept in this central case. This file is closed as a case. In the Coachella and Oxnard offices there are a series of cases and clients, not just one, which are kept open for the purpose of monitoring the fields. These clients are each screened for eligibility on an annual basis (several of these files were selected for review due to their longevity and the annual review of income was verified by the LSC reviewers). Because of the fact that these are clients from cases which were litigated and usually settled, and because one of the terms of the settlement called for on-going monitoring of the fields, this seems to be an acceptable use of LSC funds and may be closed as a case for CSR purposes when these files are eventually closed.

Forms

The offices reviewed generally use standardized compliance forms which comply with LSC requirements; some offices are using slightly outdated versions of the form though the differences do not affect compliance. Use of standardized forms ensures consistent screening of essential compliance elements in all offices.

While the written English and Spanish language intake forms were reported to be standardized, three (3) different versions were identified.⁴⁰ See the San Luis Obispo, Santa Maria, and Oxnard form, dated 11/24/09; the Santa Barbara, Marysville, Modesto, and Santa Rosa form, dated

³⁸ Originally, the Lamont office community worker reported that an intake is not performed. However, the Directing Attorney later reported that the community worker was confused, and that intakes are always conducted when individual's report potential OSHA violations, and request CRLA to conduct a field inspections. The activity is considered a case.

⁴⁰ In response to the Draft Report, CRLA noted, first, that its long-term goal was to move to a paperless intake system. Second, it notes that all intake forms have been revised to include the version date at the bottom of each page and are circulated to all staff for comments/edits as to other modifications. Once approved, the intake form will be loaded onto the program-wide SharePoint collaboration platform for use by staff. See the CRLA Response at 3 for more information.

3/21/11 without added gender categories and a Spanish version dated 4/6/11; and the Stockton form, dated 3/21/11 with added gender categories. A review of the forms revealed only minor differences which do not impact compliance; all versions include a compliant citizenship attestation, and a question regarding potential income.⁴¹

A Supplemental Intake Form is used to qualify over-income and over-asset persons. Two (2) different versions of the form were identified though the differences are in format and not substance.

All offices also used standardized Retainer Agreements with minor differences,⁴² Statement of Facts form and Fee-Generating Case Analysis Form.

Issues

Although written policies on eligibility screening were not identified, screening in the offices is generally consistent. This can largely be attributable to standardization, and the oversight and training provided by the Administrative Director of Training, Technology & Other Support. However, a few issues were identified and must be addressed. In addition, some general recommendations are offered.

First, recordation of eligible alien status of telephone applicants needs improvement.⁴³ According to interviews, support staff inquire whether telephone applicants are citizens. If they state the affirmative, staff check the U.S. Citizen box in a telephone intake only section. If they state no, most support staff leave the section blank and status is screened by a Community Worker or attorney. Such screening may not, and often does not, occur on the same day and the date of the screening is not captured. Given this often multi-step process, CRLA should add a date line to the telephone intake only section to record the date of the actual determination that the individual is 1626 eligible. In response to this recommendation in the Draft Report, CRLA stated it has modified its Intake Questionnaire to include the suggested date line. *See* the CRLA Response at pages 6 and 36-7 and Exhibit B. As discussed in the Draft Report, during the on-site review, LSC found that in some offices, when it is determined that a telephone applicant is 1626 eligible, the status was not consistently recorded. Program Letter 99-3 requires recipients to make appropriate inquiry of every telephone applicant and record such inquiry and response(s). CRLA has taken corrective action to ensure that the eligible alien status of telephone applicants and the date of the inquiry are documented pursuant to the requirements of Program Letter 99-3 and 45 CFR § 1626.7. *See* the CRLA Response at 6 and 36-37.

⁴¹ The principal difference between the 2009 and 2011 version of the forms is the addition of questions regarding gender and race, and the 2011 form has additional guidance on the use of Q and R. According to the Administrative Director of Training, Technology & Other Support, there are two (2) different 2011 versions of the intake form because the program is in the process of modifying it to expand the gender options and add a question regarding the applicant's sexual orientation. A version of that form is being tested in Stockton but has not been implemented program-wide pending any potential changes resulting from the OCE visit.

⁴² For example, there is a one-page brief service retainer, apparently adopted in 10/98 and a similar retainer adopted 07/2009 and the only apparent differences were in the formatting.

⁴³ In response to the Draft Report, CRLA provided detailed explanations as to how it will address these concerns. *See* CRLA Response at 6.

Further, interviews confirm inconsistency in qualifying individuals with income between 125%-200%. All offices use the Supplemental Intake form described above. Some offices obtain supporting documentation of expenses and subtract the expenses from income to “spend-down” the applicant’s income. Other offices do not use a spend-down but qualify an applicant based upon the presence of a factor, without supporting documentation (San Luis Obispo/Paso Robles, Santa Maria, Santa Barbara and the Stockton Basic Field staff). In some of the other offices, many intake staff members only considered one (1) factor category, rather than all of factors authorized by Part 1611. For example, the Watsonville and Santa Cruz offices considered “expenses,” such as, housing expenses, child support payments, and child care expenses. The Gilroy and Delano offices only considered the “fixed debts” category.⁴⁴ Most intake staff members were not familiar with the remaining authorized exceptions pursuant to CRLA policy, such as, other significant factors, non-medical expenses associated with age or disability, and unreimbursed medical expenses.

45 CFR Part 1611 permits programs to qualify persons using a spend-down or on the basis of a presence of a factor, at the discretion of the board of directors. The program policy incorporates the language of the regulation without clarity as to whether the board intends for staff to use a spend-down. To ensure applicants do not receive disparate screening, CRLA should take corrective action to ensure that over-income applicants are screened in a manner consistent with board intent. In its comments to the Draft Report, CRLA should clarify the board's direction on this matter and action taken to ensure consistent implementation.⁴⁵

While the written intake form adequately captures all required eligibility information, it is recommended that it be revised to mirror the screens of the ACMS.⁴⁶ Because it is used throughout the program as the initial data collection instrument, it should optimally match the ACMS fields, to ensure thorough screening. It is also recommended that the form specify that vehicles used for transportation should not be included when the applicant lists assets. The form states that the principal residence should not be included and, accordingly, adding a statement about the vehicles would make the asset section consistent within itself. This would alleviate the necessity of case handlers reviewing any other assets recorded to determine whether excluded vehicles are included.

Screeners lack consistency in their understanding as to who should be included in the household and therefore whose income should also be included.⁴⁷ CRLA’s board adopted policy states that a household includes all persons, “who reside together and contribute to the support of the

⁴⁴ The remaining offices, including the Migrant staff based in Stockton, the Fresno (Directing Attorney), and the staff in the Salinas, Monterey, and Delano offices use a spend-down.

⁴⁵ As noted in the CRLA Response to the Draft Report at 7-8, the CRLA Board Executive Committee and then the full Board of Directors have responsive changes on their agenda.

⁴⁶ See the discussion in the CRLA Response to the Draft Report at 2-4 and the discussion above noting that CRLA plans to move to a paperless intake system.

⁴⁷ In response to the Draft Report, at page 8, CRLA has considered OCE’s findings and concludes its current definition is appropriate and will address this concern through additional training and supervision. OCE concurs that the definition is appropriate and believes that CRLA’s actions will address these concerns.

applicant's home, provided that the income and assets are under the direct control of the person seeking assistance." Interviews reveal that some staff does not determine whether income or assets are under the direct control of the applicant. It is recommended that CRLA conduct training on the definition of household for staff involved in eligibility data collection and eligibility determination.

Finally, in the Draft Report, it was recommended that CRLA ensure that all offices are using the current version of standardized forms. In response to the Draft Report, CRLA indicated it would include a version date on its forms and would keep the current form on its internal wiki.

Finding 3: Sampled cases evidenced substantial compliance with the documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁴⁸ *See* CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines ("FPG") and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination.⁴⁹ *See* 45 CFR § 1611.5(b), CSR Handbook (2008 Ed.), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient "clients" and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed.), § 4.3.

⁴⁸ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

⁴⁹ In response to the Draft Report, at 9, CRLA noted it will make modifications to LegalServer to require completion of the appropriate field.

CRLA's Financial Eligibility Policies for Delivery of LSC-Funded Legal Assistance was provided to LSC in advance of the review. Though undated, a footnote in the policy reflects that the policy is reviewed by the Board of Directors annually to incorporate updated financial guidelines, including on October 23, 2005, when the program incorporated the revisions to Part 1611.⁵⁰ LSC's current income guidelines, published annually in the Federal Register, are attached to the policy.

CRLA's financial eligibility policy includes group eligibility policies for LSC-funded cases, which generally match the language at 45 CFR § 1611.6. CRLA also has a Group/Organizational Client Intake Form, undated, requiring a representative of the group to provide detailed information regarding: the group's organization and structure; financial position and resources; eligibility of individual members; and the respective nature of the group's purpose, problems, and issues to be addressed. No concerns with the form were noted.

While CRLA's income eligibility policy is generally compliant, two (2) minor adjustments to the asset portion of the financial eligibility policy, technical in nature, were recommended and are discussed below, in Finding 4.

As discussed above, interviews reveal that most CRLA offices use a spend-down to qualify individuals whose income is between 125%-200%, as documented on a Supplemental Income form, while other offices qualify individuals based upon the presence of a factor. The Draft Report advised that this practice should be consistent in all offices as dictated by board policy. See discussion in Finding 2.

Reasonable Income Prospects

Intake staff members inquired into the reasonable income prospects of all applicants pursuant to 45 CFR § 1611.7(a)(1), and noted any prospects in the financial notes section of the ACMS. The paper intake form asks applicants if they believe their income will “change significantly in the near future.” However, on-site interviews indicated that there was no uniform understanding among staff members as to what constituted a “significant change” or what constituted the “near future.” For example, the Fresno office reported that a “significant” change would be experiencing a week or more of unemployment, while the Monterey office let the applicant determine whether his or her income change was “significant.” Finally, the Gilroy, Delano, and Salinas offices make no further inquiry after the applicant completes the paper intake. In the Draft Report, CRLA was advised that it should review program practices and develop uniform standards for the screening of reasonable income prospects.

In response to these concerns, CRLA has adopted new language for insertion into its Advocacy Manual. In response to the Draft Report, CRLA explained:

⁵⁰ It should be noted, for the sake of clarity, that the LSC regulations do not require policies to contain the date of implementation or use. Nevertheless, it is helpful to have such an issuance date on policies and forms.

[T]he following language is now under review as guidance for insertion into, and supplementing, CRLA's Advocacy Manual:

In screening applicants for eligibility based on income, ask all applicants if the applicant has any reason to believe that their income is likely to change significantly in the near future. [link to LSC OLA Advisory Opinion AO - 2009-1006, dated Sept 3, 2009.]

If the applicant's response is negative, unless something else about the information provided by the applicant gives you a reasonable basis to inquire further, the inquiry should end.

If the applicant's response is, "yes," further inquiry is appropriate. The purpose of the inquiry is to determine whether there are income prospects that are not otherwise obvious, are relevant to the applicant's ability to afford legal assistance, and should be considered in determining whether the applicant is financially eligible.

In determining financial eligibility, we use actual current annual income. If an applicant's income varies, or the applicant expects a change in income, we should consider these variations or changes in calculating current annual income. A 'significant' change is one that changes the applicant's financial status with regard to being over or under either 125% or 200% of the FPG.

Once approved, the amendment will be incorporated into CRLA's Wiki-based Advocacy Manual, and additional training will be provided.

CRLA Response at 8-9.

Group Cases

Several cases were reviewed in which CRLA was representing a group client. No deficiencies were noted.

Two (2) Stockton group cases were reviewed. One case,⁵¹ in which CRLA represented an organization that serves the homeless population, was opened prior to the revisions to 45 CFR Part 1611 and was screened under the requirements of the former version of the regulation.⁵² In the second case, CRLA, with the assistance of private attorneys, drafted incorporation documents

⁵¹ See Case No. 04-04039616. See discussion of case in Finding 15.

⁵² The previous version of the regulation allowed recipients to represent a group that has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance," and required that the group demonstrate that it "lacks, and has no practical means of obtaining, funds to retain private counsel." See previous regulation, 45 CFR § 1611.5(c).

and obtained tax exempt status for a group that provides services to low-income students.⁵³ It was opened April 7, 2009, after the revisions to 45 CFR Part 1611. This case included the aforementioned group eligibility form, supplemented by supporting documentation. Screening of both cases is compliant.

Sampled cases evidenced that CRLA is in substantial compliance with 45 CFR § 1611.4, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines.⁵⁴

The following deficiencies were noted:

- There were two (2) cases reviewed that were reported to LSC where the client's income exceeded 125% but was below 200% of the FPG, however, no authorized exceptions were documented in the case file.⁵⁵
- One (1) file reviewed was missing the screening for the factors for a client whose income changed during the course of the representation and became over the 125% income threshold.⁵⁶

Accordingly, given the large number of offices and cases reviewed, the three deficiencies found indicate CRLA is in substantial compliance. Therefore, no corrective action is required.

Finding 4: Sampled cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.

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

⁵³ *See* Case No. 09-0257778. It is noted that this case was discussed in Finding 1 as it was administratively reopened in 2011 and therefore may be reported twice.

⁵⁴ The term "substantial compliance" is used in this report to indicate that the program's policies and practices are intended to produce compliance with the relevant regulations, nevertheless, during the review of the files there were errors or exceptions noted. Because of the large size of CRLA, with over 20 offices, during the review there were over 1,000 files reviewed, as such some of the findings of case specific non-compliance may seem large; nevertheless, in the overall scale of this review these numbers by themselves do not indicate a finding of "non-compliance."

⁵⁵ *See* Case No. 07-0221700, Open, Salinas (This is a case in which the client's household income for a family of one (1) was \$1,089 which exceeded 125% but was below 200% of the FPG and no authorized exceptions were documented in the case file). *See also* Case No. 11-0285605, (This is a case in which the client's household income was \$2444 for a family of 4 which exceeded 125% but was below 200% of the FPG and no authorized exceptions were documented in the case file. The case file incorrectly indicates that client's household income was 113% of the FPG). As noted above, in response to the Draft Report, CRLA noted it will make modifications to LegalServer to require completion of the appropriate field.

⁵⁶ *See* Case No. 09-0255108. Notes in case file indicated the client was initially determined to be financially eligible for assistance; however, later the client became over income due to obtaining new employment. No factors were considered regarding new income.

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁵⁷ *See* CSR Handbook (2008 Ed.), § 5.4.

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

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

CRLA's Financial Eligibility Policies for Delivery of LSC-Funded Legal Assistance establishes an asset ceiling at \$20,000 for an individual applicant and an additional \$3,000 for each additional household member. Exempt from consideration is the household's principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

While CRLA's asset eligibility policy is generally compliant, two (2) technical changes are recommended. First, Section III.D.3 adopts the exception in 45 CFR § 1611.4(c) allowing programs to deem an applicant eligible without making an independent determination of income or assets if the applicant's income is solely derived from a governmental program for low income individuals and families. When adopting the exception, 45 CFR § 1611.4(c) also requires that the "recipient's governing body... determine [] that the income standards of the governmental program are at or below 125% of the Federal Poverty Guidelines amounts and that the governmental program has eligibility standards which include an assets test." CRLA's policy states:

If an applicant's income is derived solely from a governmental program for low-income individuals of families [e.g., TANF, General Relief, SSI] whose income standards are at or below 125% FPG and includes an assets test, the applicant is financially eligible for LSC-funded assistance without an independent determination of income and assets. CRLA's Board finds that the income standards of these programs are at or below 125% of the FPG and that the governmental program has an assets test.

⁵⁷ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

The policy identified three (3) benefits (TANF, General Relief and SSI) but the language indicates these are examples (e.g.), leading to an impression that there may be other such programs that would fall under this exception. The Draft Report advised CRLA that it “must review this provision with its governing body and, if this is an exclusive list, the language should be modified so that this is clear or, if there are other benefits which meet this requirement, they should be identified in the policy.”⁵⁸ In response to the Draft Report, CRLA indicated that it was revising its internal policy to clarify the government benefits exemption.⁵⁹

Second, during the on-site review, it was noted that the policy excludes from consideration assets that are exempt from attachment under state or Federal law, without specification. The exclusive list of allowable asset exceptions is provided in 45 CFR § 1611.3(d)(1) and the program policy adopts the exceptions verbatim. During interviews, case handlers, responsible for assessing eligibility, could not consistently recite the list of assets that would be covered under the exempt from attachment exemption. In LSC's experience, such general language is difficult to implement on a consistent basis and may result in errors or, in the least, extended time assessing eligibility. Further, interviews revealed that some of the exemptions may conflict with one of the other categories of assets wholly exempted (i.e., California exemption of one vehicle to a maximum of \$5,000 versus the permissible LSC exemption of all vehicles used for transportation). For clarity, consistency and efficiency, it is recommended that CRLA specifically list in its policy those assets it intends to exempt from consideration.⁶⁰ In response to this finding, CRLA has amended its policies to set forth a specific list of exclusions.⁶¹

Sampled case files reviewed revealed that CRLA is in compliance with 45 CFR § 1611.6, revised 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: Sampled cases evidenced compliance with the restrictions in 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, improvements in fulfilling the documentation requirements of that regulation are necessary.

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.), § 5.5; *See* LSC Program Letter 99-3 (July 14, 1999).

⁵⁸ The language of the policy did not impact compliance in the offices visited. Interviewees were generally aware of this exception to the screening requirements; however, in practice, all applicants are screened for income and assets.

⁵⁹ *See* CRLA Response at 9.

⁶⁰ The review revealed no indication that staff erroneously included an exempt asset in the asset calculation.

⁶¹ *See* the CRLA Response at 10.

In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁶² 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.

Citizenship attestations are captured on the program-wide written intake form. The statement complies with the requirements of the CSR Handbook (2008 Ed.), § 5.5.⁶³

Based upon case review, CRLA is in non-compliance with the documentation requirements of 45 CFR § 1626.6, as there were six (6) cases lacking written citizenship attestations.⁶⁴

There were nine (9) cases in the review sample containing executed written attestations but lacking the dates of execution.⁶⁵

⁶² *See* Kennedy Amendment at 45 CFR § 1626.4.

⁶³ Prior to 2008, CRLA utilized an intake form in which the applicant simply checked a box in the middle of the page indicating citizenship (or alien eligibility) and then signed and dated the form at the bottom of the page attesting to the accuracy of all information provided. In 2008, a revised intake form was adopted in which the citizenship attestation in the middle of the page included the signature line and date.

⁶⁴ *See* Case No. 11-0288217 (no citizenship attestation contained in the file); Case No. 05-42004081, (no hard copy of the citizenship attestation where the client had been seen in person, although file note indicate an attestation had been obtained) – it should be noted that this file was retroactively closed prior to the review (when it was discovered on the open list) as a 2007 closure and was coded as an "Q" meaning it was deselected and not reported to LSC as a closed CSR case. *See also* Case No. 08-235572, Case No. 10-0275036, Case No. 09-0257888, and Case No. 10-0277233. In addition to the aforementioned cases, there was also a deselected file which was reviewed which did not have a completed attestation/eligible alien documentation notation. *See* Case No. 09-0256909, deselected from 2011 CSRs and not included in the tabulation of missing attestations set forth in the report.

⁶⁵ *See* Case No. 11-0287613. The failure to date the attestation makes it difficult to determine whether the citizenship attestations were obtained prior to the establishment of the attorney-client relationship and the citizenship attestation was not in the form outlined in the CSR Handbook (2008 Ed.) which requires a date. However, it should be noted that while the attestation itself was not dated, the intake sheet which contained the attestation was dated. It should also be noted that while this will not remedy the timeliness issue, CRLA staff indicated that efforts will be made to date the attestations. *See also* Case No. 09-0263655 (the client failed to date citizenship attestation, and timeliness could not be determined by the intermediary), Case No. 09-0254139, Case No. 09-0255107 (the number "2" was the sole number entered on the dateline of the attestation), and Case No. 10-0279243. *See also* Case No. 10-0282422, Case No. 11-0290471, Case No. 10-0274390, Case No. 10-0269328, and Case No. 10-0273495.

There were also six (6) case files reviewed that contained signed citizen attestation; however, the attestation did not comply with CSR Handbook (2008 Ed.), § 5.5, which requires a separate signature line tied only to the citizenship attestation.⁶⁶

There was one (1) case file reviewed that was deselected by CRLA due to the client not meeting the eligibility requirements of 45 CFR Part 1626.⁶⁷ The case was accepted and the case handler assisted the client in completing *pro se* documentation. The case handler changed the case to a matter once she determined that the client was not eligible under 45 CFR Part 1626. According to 45 CFR § 1626.3, recipients may not provide legal assistance for or on the behalf of an ineligible alien. Additionally, CSR Handbook (2008 Ed.), § 2.3, FN 11 states, that a program may not provide or report the same level of assistance as a case for an eligible client and as a matter for an ineligible client.

Finally, one (1) case did not have acceptable H2-documentation as outlined by 45 CFR Part 1626.⁶⁸

Two (2) screening issues were identified. As described in Finding 2, improvements in documenting verbal screening of telephone applicants are required. The Draft Report stated that “CRLA must take corrective action to document the eligible alien status of the applicant and the date of the screening, as the date may not be the same as the collection of the other eligibility data.” In its response, CRLA noted that since March 21, 2011, the standard intake questionnaire requires that the citizenship attestation be separately dated.⁶⁹ Second, interviews revealed that private attorneys at clinics held in Santa Barbara and Marysville may provide legal assistance to undocumented persons. While all attendees complete intake forms, eligibility is not assessed prior to the provision of legal assistance.

In the Draft Report, LSC made the following observations:

CRLA must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

⁶⁶ See Case No. 05-49001789, Case No. 06-0204058, Case No. 04-32019197, and Case No. 08-0232708.

See also Case No. 06-0202241 and Case No. 04-48002116, the citizenship attestation was executed on a non-compliant form as the signature line was not tied to a separate attestation statement. These cases were opened prior to 2008, and were closed in 2011. The CSR Handbook requires that all cases closed after 2008 contain attestations executed in compliance with the Handbook which requires the signature line attestation only be tied to the attestation. See CSR Handbook (2008 Ed.).

⁶⁷ See Case No. 10-0280671.

⁶⁸ See Case No. 08-0237433 (This case was opened September 12, 2008. The intermediary explained that the client’s employer took away the client’s Visa as retaliation for meeting with attorneys. Therefore, CRLA accepted the client’s employment contract as proof of his eligible alien status. This reviewer was provided a copy of the employment contract and asked the intermediary to redact any identifying information. The contract provided is in Spanish and seems to be only a portion of the complete contract, as the first page starts with Article 11 (Artículo 11). Upon review, the portion of the contract provided does not comply with 45 CFR § 1626.7(a)(2) as it does not appear to be an authoritative document issued by Immigration and Naturalization Services, a court or any other governmental agency).

⁶⁹ See also, the CRLA Response to the Draft Report at 7.

CRLA must ensure that, where appropriate, case files contain dated citizenship attestations pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.) § 5.5 and provide staff with training concerning these policies.

CRLA must ensure that, where appropriate, case files contain appropriate H-2A documentation as outlined by 45 CFR Part 1626 and provide staff with training regarding these policies.

Finally, CRLA is reminded to ensure it collects dated citizenship attestations and documents when alien eligibility is determined as required by 45 CSR Part 1626 and CSR Handbook (2008 Ed.), § 5.5.

In response to the Draft Report, CRLA has provided a revised standard Intake Questionnaire, which includes a portion for recording eligible alien status for telephone intakes. The revised Questionnaire, which was a draft at the time the comments were submitted, contains a new line on the second page for staff to complete, which requires staff to provide the title of the alien eligibility document reviewed, the document number, the date of expiration, and the name on the document, if different from the one listed above on the intake form. *See* CRLA Response at 6 and Exhibit B. While the interim form is sufficient to address the concern raised in the Draft Report, to ensure that this is implemented, CRLA is directed to advise OCE within 30 days of the issuance of this Final Report whether this form has been adopted. If not, LSC will follow-up on this separately.

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.⁷⁰ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Although not required by LSC, CRLA policy requires the use of a brief service retainer agreement, in addition to an extended service representation. *See* Section VI, CRLA Financial

⁷⁰ 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.

Eligibility Policies for Delivery of LSC-Funded Legal Assistance. These forms were used in all offices visited, and presumably program-wide. An amended version of the retainer agreement with provisions for attorneys' fees was also identified. It intends to amend a version of the retainer signed by a client with an open extended service case at the time of the regulatory change with respect to attorneys' fees. The extended service files reviewed often included more than one (1) retainer, with new agreements executed as the scope of assistance progressed. Many of the files reviewed contained either the limited retainer and/or serial retainer agreements.⁷¹

Based upon case review, CRLA is in substantial compliance with 45 CFR § 1611.9. The review of sampled cases disclosed seven (7) case files which did not contain a required retainer agreement.⁷² In addition, two (2) retainers lacked a statement identifying the legal problem and nature of service to be provided.⁷³

There are no recommendations or corrective actions required. Although the Draft Report did not seek corrective action, CRLA has strengthened the language in its Wiki-based Advocacy Manual to ensure that the errors mentioned above are not repeated. *See* CRLA Response at 40-1.

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

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

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

All of the cases reviewed that required a Statement of Facts, as per 45 CFR Part 1636, contained one.

There are no recommendations or corrective actions required.

⁷¹ Since the team reviewed over 1,100 files, the number of examples could run into the hundreds.

⁷² *See* Case No. 10-0279895, Case No. 11-0285204, Case No. 08-0231765, Case No.10-0279087, Case No. 08-0231820, Case No. 09-0266367, and Case No. 10-0277233.

⁷³ *See* Case No. 10-0278579 and Case No. 09-0263445.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1 (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.1 and 45 CFR § 1620.4.

All of the cases reviewed evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.1.

There are no recommendations or corrective actions required.

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

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

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

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed.), § 5.6.

CRLA is in substantial compliance with CSR Handbook (2008 Ed.), § 5.6 in that out of over 1,100 case files reviewed, there were only 13 cases reviewed from the sample where there was no legal advice documented in the case file.⁷⁴ However, interviews and file reviews reveal that

⁷⁴ *See* for example Case No. 11-0284992; Case No. 11-0289347 (The case handler sent client an eviction defense packet, however, no legal advice was documented in the case file); Case No. 10-0282418; Case No. 10-0279610; Case No. 09-0263302 (Client requested assistance with a criminal complaint. Attorney informed client that he would be appointed a public defender. No additional assistance was provided); Case No. 09-0255497 (The attorney met with the client and requested additional information before any advice could be provided. The client never returned); Case No. 10-0275570 (because this was an open case, the intermediary said it would be closed and deselected); Case No. 09-0254056 (Attorney met with client and informed him that additional information was

(This footnote is continued on the next page.)

case closing practices in Santa Rosa resulted in the inclusion of cases which lacked documentation of legal assistance in past CSRs.⁷⁵ The program self-identified this error and developed corrective measures. As discussed previously, if legal advice is provided and documented in the file, the file should be counted as a case for CSR purposes; if only legal information is provided, then the closed file should be counted as a matter.⁷⁶ See Finding 2.

Finding 10: CRLA’s application of the CSR case closure categories is not consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 19 instances of case closure errors identified within the sampled files.

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.), § 6.1.

CRLA's ACMS closure categories include the LSC codes A through L, and internally developed codes Q (untimely) and R (other ineligible cases). The internally developed codes are intended to remove non-compliant cases from the CSRs. See discussion in Finding 1.

Nineteen (19) of the case files reviewed were closed with incorrect closing codes.⁷⁷ A pattern of error was identified indicating that CRLA staff members do not clearly understand the closing

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needed to be provided by the client before an assessment of the case could be made. The client never returned); and Case No. 10-0280820 (Attorney requested that the client bring his wage statements for review in order to assess his case. The client never returned).

See also Case No. 05-43003951; 09-0255108; Case No. 10-0271796; and Case No. 10-0274648 (the file reflected that no legal assistance was rendered to the client because the client’s legal issue was outside of CRLA’s priorities. This case should have been de-selected as no legal assistance was provided.).

⁷⁵ Eleven (11) file in the Santa Rosa office were missing this information. See Case No. 10-0272672, Case No. 10-0282765, Case No. 10-0280138, Case No. 10-0269869, Case No. 10-0281428, Case No. 10-0269868, Case No. 10-0271155, Case No. 09-0257327, Case No. 09-0266547, Case No. 09-0265592, and Case No. 09-0263686. These were PAI cases, where, according to the intermediary, the applicants attended a bankruptcy clinic where general bankruptcy information is provided to the attendees. The intermediary explained that the applicants then meet individually with an attorney in order to obtain specific advice on his/her legal situation. However, this advice was not accurately recorded in the case files. The intermediary indicated that CRLA staff are aware of this issue and are working to resolve it.

⁷⁶ For further information, see CSR Handbook (2008 Ed.), §§ 2.2 and 2.3. Section 2.3, “Definition of Legal Information” provides:

For CSR purposes, legal information is defined as the provision of substantive information not tailored to address a person’s specific legal problem. As such, it is general and does not involve applying legal judgment and does not recommend a specific course of action. For example, providing only a pamphlet or brochure is legal information and not legal assistance. The provision of legal information does not create an attorney-client relationship.

⁷⁷ See Case No. 09-0257786 (where case was closed as "B-Limited Action" but where work documented was more consistent with "L-Extended Services") and Case No. 09-0268778 (This case was closed utilizing the closing code “B”; the case was in litigation and the attorney negotiated a settlement with the opposing party. The applicable

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closing code in this case is “G” (Negotiated Settlement with Litigation)). *See also* Case No. 10-0280414 (This case was closed utilizing the closing code “X” (Deselected) because CRLA determined the case to be untimely closed. The case was opened on 10/4/2010. The attorney drafted a letter to the landlord to have client’s security deposit returned. The case was closed on 5/17/2011. Since the case was opened after 9/30/2010 and, based on the level of service provided to the client, this case should be closed and reported with the closing code “B” (Limited Action)). *See also* Case No. 04-032019197 (This is a case that was closed utilizing the closing code “G” (Negotiated Settlement with Litigation)). This case was in litigation when both parties reached a settlement. However, the opposing party defaulted on the agreement and an action was brought by CRLA on the client’s behalf. Subsequently a judgment was entered against the Defendant. Since the highest level of service provided was a contested court decision, this case should be closed as “I (b)” (Contested Court Decision)). *See also* Case No. 10-0271726 (This case that was closed utilizing the closing code “B” (Limited Action). According to the notes in the case file only legal advice was provided to the client, therefore, closing code “A” (Counsel and Advice) is the applicable closing code. *See also* Case No. 09-0264929 (This is a case that was closed utilizing the closing code “F” (Negotiated Settlement Without Litigation)). The case was actually in litigation when the settlement was reached, therefore, the applicable closing code is “G” (Negotiated Settlement with Litigation)). *See also* Case No. 09-0266531 (This was a case that was closed utilizing the closing code “L” (Extensive Service)). This case went to litigation where a decision was entered. CRLA subsequently filed an appeal in the case but the client withdrew. The applicable closing code in this case is “I(b)” (Contested Court Decision). *See also* Case No. 09-0268128 (This is a case that was closed with the closing code “L” (Extensive Service)). This was a case that involved approximately 100 clients. Clients in the case had an opportunity to opt in to litigation in the case. CRLA lost contact with this specific client after his initial meeting with the attorney. The client was provided legal advice, however, never opted in to the litigation in the case. The applicable closing code in the case is “A” (Counsel and Advice)). *See also* Case No. 09-0267648 (This is a case that was closed with the closing code “L” (Extensive Service)). This was a case that involved approximately 100 clients. Clients in the case had an opportunity to opt in to litigation in the case. CRLA lost contact with this specific client after his initial meeting with the attorney. The client was provided legal advice, however, never opted in to the litigation in the case. The applicable closing code in the case is “A” (Counsel and Advice)). *See also* Case No. 08-0253079 (This is a case that was closed utilizing the closing code “B” (Limited Action)). The attorney provided legal advice to client and did extensive work in the case attempting to locate the opposing party, therefore, “L” (Extensive Service) is the applicable closing code). *See also* Case No. 09-0260714 (This is a case that was closed utilizing the closing code “B” (Limited Action). The notes in the case file indicate that only legal advice was provided to the client, therefore, “A” (Counsel and Advice) is the applicable closing code). Two Modesto sampled cases reflected incorrect closure codes. Both were closed in 2011 and can be changed prior to submission of 2011 CSRs. *See* Case No. 11-0284162 (a case closed with an “L” (Extensive Service) closing code, when the case work supported only a “B” (Limited Action) code. Documentation revealed that the extent of the attorney’s work was to negotiate a vacate date in response to a 3-day notice to quit). *See* Case No. 11-0290803 (a case which was closed with an “A”(Counsel and Advice) code though the case handler assisted the client in preparing a pro se answer, thereby supporting a “B” (Limited Action) code). *See also* Case No. 07-0215923 (the case was closed with a closing code of “A” (Counsel and Advice) when the more appropriate closing code would have been “L” (Extensive Services) because the file reflected that the private attorney prepared a wage claim and attended a wage claim hearing. The client failed to appear for this hearing, but extensive work had been performed by the private attorney), and Case No. 10-0273404 (with a closing code of “F” (Negotiated Settlement without Litigation)). The more appropriate closing code would have been “G” (Negotiated Settlement with Litigation) because the file reflected the private attorney negotiated a settlement to dismiss the court proceedings against the client). *See also* Case No. 10-0277241 (the case was closed using a closing code of “A” (Counsel and Advice), when the more appropriate code would have been “B” (Limited Action/Brief Services) because the file reflected that a wage claim had been prepared for the client, and limited services had been provided); Case No. 10-0272433 (the case was closed with a closing code of “A” (Counsel and Advice) when the more appropriate closing code would have been “B” (Limited Action/Brief Services) because the file reflected that the attorney prepared a *pro se* pleading on the client’s behalf); Case No.04-34011361 (the case was closed with a closing code of “H” (Administrative Agency Decision) when the more appropriate closing code would have been “F” (Negotiated Settlement without Litigation) because the file reflected that no administrative action for this client was filed or pending in this multi-client litigation case); and Case No. 09-0268245 (the case was closed with a closing code of

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codes to use when the client withdraws from a case prior to its conclusion. The CSR Handbook addresses this issue and notes that the case should be closed at the highest level of service provided to the client.⁷⁸ As a result, CRLA should review its use of the “A-Counsel and Advice,” “F-Negotiated Settlement without Litigation,” “G-Negotiated with Litigation,” and “L-Extensive Services” closing codes, and provide training to its staff on the use of these closing codes consistent with the CSR Handbook requirements.

In the Draft Report, it was recommended that CRLA provide staff with training regarding these policies to foster correct usage of the CSR closing categories.⁷⁹

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).⁸⁰ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed.), § 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).

CRLA is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3(a). As discussed in Findings 1 and 10, CRLA uses a Q, untimely, closing code to ensure that these cases are excluded from CSRs. Two 2011 untimely closed cases were identified, though both had been properly deselected from 2011 CSRs.⁸¹

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H” (Administrative Agency Decision) when the more appropriate closing code would have been “L” (Extensive Services) because the file reflected that no administrative decision was obtained because the client failed to appear, and the action against the client was dismissed).

⁷⁸*See* CSR Handbook (2008 Ed.), § 8.3.

⁷⁹In its Response to the Draft Report, CRLA indicated it will provide such training. *See* page 36 of the CRLA Response.

⁸⁰The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

⁸¹*See* Case No. 10-0279691 and Case No. 09-0256909, 2011).

CRLA is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 as there were only 10 cases reviewed from the sample that were either untimely closed or dormant.⁸² In addition, in the San Luis Obispo office there were several files on the open list which should have been closed in prior years⁸³ and there was one (1) file in the Coachella office which is awaiting action by the Central Office.⁸⁴ In the Draft Report, LSC advised that additional oversight was required in order to avoid untimely closed or dormant cases. It was recommended that CRLA periodically review its open case lists, program-wide, to ensure timely closure of completed case files.⁸⁵

⁸² See for example Case No. 10-0271374, 2011, Santa Cruz (This case was opened on 3/1/2010 and closed on 1/27/2011 with a closing code of “A” (Counsel and Advice). The last documented work in the case file was on 3/9/2010; therefore, this case should have been closed and reported in the 2010 reporting year). See also Case No. 10-0279610 (This is a case that was opened on 9/15/2010 and closed on 1/24/2011 with a “B” (Limited Action) closing code. The last documented work in the case file was on 12/9/2010; therefore this case should have been closed and reported in the 2010 reporting year). See also Case No. 10-0270935 (This case was opened on 2/17/2010 and closed on 1/24/2011 with a “B” (Limited Action) closing code. The last documented in work in the case file was on 8/16/2010; therefore, this case should have been closed and reported in the 2010 reporting year). See also Case No. 100 08-0227322 (This case was opened on 1/3/2008 and closed on 1/2/2009 with closing code “A” (Counsel and Advice). That last documented activity in the case file was on 1/11/2008; therefore the case should have been closed and reported in reporting year 2008). See also Case No. 09-268531 (This case was opened on 1/16/2009 and closed on 12/31/2010 with closing code “A” (Counsel and Advice). The last documented activity in the case file was on 12/16/2009, which was prior to the opening date of the case in the ACMS, therefore this case should have been closed and reported in the 2009 reporting year). See also Case No. 09-0253935 (This case was opened on 1/16/2009 and closed on 12/31/2010 with closing code “A” (Counsel and Advice. The last documented activity in the case file was on 3/20/2009; therefore this case should have been closed and reported in reporting year 2009).

See also Case No. 08-04-34011361 (this file was closed on 08-13-10. The intermediary reported that all activity ceased in this case file in 2006, with no recent legal activity prior to closing, and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing). See also Case No. 08-0238026 (this file was opened on 9-29-08, and closed on 12-15-09, with a closing code of “B-Limited Action/Brief Services.” The intermediary reported that all activity ceased in this file in 2008, with no recent legal activity prior to closing, and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing), Case No. 08-0230445 (this file was opened on 3-25-08, and closed on 3-10-09, with a closing code of “B-Limited Action/Brief Services.” The intermediary reported that all activity ceased in this file in May, 2008, with no recent legal activity prior to closing, and no documented activity in the file regarding future legal assistance pending or needed between the date of the last advice/service provided and closing), and Case No.03-34011251 (this file was closed on 2-3-09. The intermediary reported that all activity ceased in this case file in 2006, with no recent legal activity prior to closing, and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing).

⁸³ It should be noted that there were several files reviewed which were not reported in prior years which were closed as either “Q” or “R” (CRLA codes, discussed above in Finding 1); deselected which were not closed in a timely fashion. In addition, there were files which were deselected in the current years which were not closed in a timely fashion. None of the untimely closures appeared to have adversely impacted the client’s case or rights; these were generally files which had not been closed after the case was wrapped up. See Open Case Nos. 10-0281247; 07-0213736; 05-42004081; 08-0231943; 10-0270645; and 07-0213279.

⁸⁴ See Case No. 05-31035925. This file was last active in the Coachella office on November 30, 2009 and the intermediary indicated they are awaiting action by DLAT in the Central Office.

⁸⁵ In response to the Draft Report, CRLA provided both a short- and long-term solution to this which should address these concerns. See pages 34-36 of the CRLA Response.

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

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed.), § 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.), § 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.), § 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.), § 6.4.

During the review, pairs of apparent duplicate cases were tested for duplication.⁸⁶ There were five (5) instances of apparent duplicate files being opened, therefore, the sample cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2.⁸⁷

However, given the large number of cases sampled and the fact that no discernible pattern was noted in the five (5) instances noted above, there are no recommendations or corrective actions required.

Finding 13: Review of the recipient's policies and interviews with staff attorneys reveal that CRLA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such

⁸⁶ Several files were targeted and tested for possible duplicates – in most instances, the files were found to not be duplicates – either there were different issues or different opposing parties or both. *See*, for example, Case No. 10-0281445 and Case No. 11-0291662.

⁸⁷ *See* Case No. 08-0230442 (This case file could not be located, however, this was one of two cases listed on the ACMS with the same case number and client name). *See also*, Case No. 06-0204058 (This case and two (2) other cases are all listed on the ACMS as separate cases, however, they all have the same client name and case number, however, each case has different funding codes). *See also*, Case No. 06-0203567 (This case was originally accepted in Delano and then transferred to the Oxnard office. The case was never closed in the Delano office and appears on the ACMS in both Delano and Oxnard). *See also* Case No. 06-0203793, Case No. 06-0203793, Case No. 03-49001177, and Case No. 03-49001177.

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.

CRLA has entered into a Collective Bargaining Agreement with the Legal Service Workers of Rural California, National Organization of Legal Service Workers, United Auto Workers Local 2320, AFL-CIO. The current agreement, Article 14, Outside Employment, contains restrictions and procedures which comport with 45 CFR Part 1604. Employees are required to provide CRLA with notice of not less than 15 days' notice on a specified form, "Outside Employment Notice" and CRLA is required to make its determination within 5 working days from the date of receipt. CRLA's Outside Practice of Law policy, however, should be updated to include the current definition of "outside practice of law" and the requirements in 45 CFR § 1604.4(b) as well as to ensure it conforms with the current 45 CFR Part 1604. In response to the Draft Report, CRLA has updated the Outside Practice of Law Policy. *See* the CRLA Response at 41.

During the period January 1, 2009, through July 15, 2011, two (2) CRLA staff attorneys were granted permission to conduct an outside practice of law. In both cases, cited circumstances were within the guidelines of 45 CFR § 1604.4 Permissible Outside Practice.

Based on the review of the recipient's policies and interviews with attorneys who have and have not engaged in the outside practice of law CRLA is in compliance with the requirements of 45 CFR Part 1604.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities). Two (2) cartoons political in nature were found to be displayed in the waiting area of a CRLA office; however, CRLA has remedied this matter.

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.

CRLA has a written policy conforming with 45 CFR Part 1608 posted on its CRLA Wiki Site. CRLA Cash Disbursement files including the Check Registers for years 2009 and 2010 were reviewed, and 110 items potentially indicative of expenditures for prohibited activities were selected for follow-up to determine program practices. A review of backup material for the selected expenditures found no indication of prohibited political activities. It was determined that CRLA had an ongoing relationship with a former employee who had recently been elected to the California State Assembly. The assemblyman has for a number of years rented a residence on the property of the Watsonville CRLA office. The residence is a separate structure on the rear of the property and there is no political signage in evidence (The Assemblyman's office is in Salinas, CA). It was found that the rent (\$1,500/mo.) is market rate for the area and receipt of payments by CRLA for the past two years was verified. It was noted that penalties were applied on the occurrence of an insufficient funds check. The Assemblyman's campaign website is still

on-line, and a review indicated that while many organizations had endorsed the candidate, CRLA was (properly) not among them.⁸⁸

Sampled files reviewed, and interviews with staff indicate, that CRLA is not involved in such activity, with the following possible exceptions. The Gilroy office was found to be displaying an editorial cartoon originally published in the Gilroy Dispatch, entitled “The Presidential Theory of Relativity.” The cartoon was comprised of three (3) sketches. The first was a sketch of President Obama holding a copy of his agenda with the words, “The First Hundred Days” at the top of the sketch, the second was a sketch of a dog with the words, “That’s like 700 in Dog Days,” and finally, the third sketch was of an elephant holding a copy of a document titled “Undoing the Bush Years” with the words “or 8 years in Republican Days.”⁸⁹ The second cartoon, entitled, “Border Fence” by Lalo Alcaraz, published in 2006, depicts protesters standing before a perplexed President George H. Bush, demanding their rights. President Bush’s solution is to build a heavily armed border fence.⁹⁰ Interviews reflected that the cartoons were displayed for humorous-rather than political-purposes and were editorial commentaries, rather than an effort to support or promote political activities or interests. After the issuance of the Draft Report, LSC determined that the display of this cartoon in the waiting room was inconsistent with Program Letter 11-1. When CRLA management was advised, while onsite, it took prompt and appropriate action. Accordingly, no further action is required. The Draft Report recommended that CRLA should provide program-wide staff training concerning these requirements and develop protocols for the display of information in its offices. In its response to the Draft Report, CRLA advised:

CRLA will be conducting a training of DLATs, Regional Directors and Project Directors. In turn, DLATs, RDs and PDs will be expected to conduct trainings in each of the Regional offices by no later than August 31, 2012 and to document staff attendance at the training.⁹¹

Sample brochures obtained from branch offices evidenced that CRLA is not involved in activities prohibited under 45 CFR Part 1608.

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

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

⁸⁸ See <http://www.alejoforassembly.com/>

⁸⁹ The cartoon was immediately removed and staff members instructed not to display cartoons political in nature in CRLA offices.

⁹⁰ The cartoon was immediately removed and staff members instructed not to display cartoons political in nature in CRLA offices.

⁹¹ CRLA Response at 42.

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two (2) private attorneys; neither the referral service nor two (2) private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one 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).

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

CRLA has a written policy governing Fee Generating Cases as defined by 45 CFR Part 1609, which is available to staff via the CRLA Wiki. During 2009, the Program received \$16,725 in case related cost recoveries, and no attorneys' fees. In 2010, with the changes in LSC Regulations, the Program received \$135,976 in attorneys' fees and costs, of which \$75,461 was allocated as derivative income to LSC funding. In addition to attorneys' fee and cost recoveries, CRLA is a frequent recipient of *cy prè*s awards.⁹² CRLA was nominated for and was the recipient of *cy prè*s awards of \$920,983 in 2009 and \$228,312 in 2010.

All of the sampled case files reviewed evidenced compliance with the requirements of 45 CFR Part 1609 in each of its iterations.

There are no recommendations or corrective actions required.

⁹² A *cy prè*s award is the distribution of an unclaimed portions of a class-action judgment or settlement funds to a charity that will advance the interests of the class or group and is approved by the court with jurisdiction over the original case.

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

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

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

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

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

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

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

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

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

CRLA's Executive Director made an annual Certification of Program Integrity presentation to the CRLA Board of Directors on December 4, 2011. Following review, discussion, and amendment, it was approved, signed and forwarded to LSC as required by Part 1610.8(b).⁹³

CRLA was the formative entity for the California Rural Legal Assistance Foundation ("CRLAF"), formed in 1981, to provide:

...statewide legal and policy advocates for the most exploited of California's rural poor: the unrepresented, the unorganized, and especially the undocumented and indigenous farm workers. We engage in impact litigation, community education and outreach, legislative and administrative advocacy, and provide public policy leadership on the state and local levels to them and their families in the areas of labor, housing, education, health, worker safety, pesticides, citizenship, immigration, and environmental justice.⁹⁴

Since founding, the CRLA and CRLAF have had separate boards of directors. Since 1996, there has been a physical separation of entities, with the CRLAF being located in Sacramento, CA. (while the nearest CRLA office is located in Marysville, CA). In addition to physical and directorial separation, California RRF-1 and IRS Form 990 filed by each organization reflects the limits of their relationship, with CRLAF being an IOLTA sub-grant recipient of CRLA. A review of CRLA Board minutes for June 25, 2011, reflect board approval for a grant of IOLTA funds for the 2011-2012FY in the amount of \$185,000 (a reduction from \$215,000 the prior year.)

During the period 2009 through July 15, 2011, three (3) CRLA part-time employees have been employed by CRLAF. The employees each had fixed work schedules with CRLA and conducted no work for other entities from CRLA workspace.

During the period 2009 through July 15, 2011, CRLA did not transfer any LSC funds to CRLAF, nor to any other organization which engages in restricted activities. CRLA does have shared locations with four (4) non-profit organizations. These include the Madera Coalition for Community Justice (which provides no legal services); Seniors Legal Services (Santa Cruz);

⁹³ The 1610 Report addresses CRLA's relationships with organizations which may engage in restricted activities or practices. CRLA's report affirms legal separation, no transfers of LSC funds, no resources used to subsidize organizations or activities and physical and financial separation from such organizations.

⁹⁴ See <http://www.crlaf.org/who-we-are>. This was the language set forth on the referenced website at the link at the time the Draft Report was issued; this language has since changed.

Community Action Board (Job Training and Employment Services, Housing and Homeless Services, Immigration Assistance, and Community Building) in Santa Cruz; and The San Luis Obispo Legal Alternatives Corp. (Pro Bono Legal Services). The latter is a renter of CRLA space for fair value, a portion of which represents derivative LSC income. All organizations have physical separations and are distinguished through signage.⁹⁵

Recipients are required by 45 CFR § 1610.5 Notification, to provide funding sources exceeding \$250 with written notification of the prohibitions and conditions on use of the funds resulting from the receipt of LSC funding. See 45 CFR § 1610.5.

CRLA Publishes an Annual Report which includes a listing of donors, foundations and government programs providing support to CRLA. Included on the “financials” section is the statement: “*CRLA is funded in part by Legal Services Corporation. As a condition of the funding it receives from LSC, it is restricted from engaging in certain activities in all of its legal work-including work supported by other funding sources. CRLA may not expend any funds for any activity prohibited by the Legal Services Corporation Act, 42 USC 2996 et seq or by Public Law 104-134.....*” A copy of the annual report is sent to each donor and funding source for that year. If this is the only notification provided, this is insufficient. In the Supplementary Information published with the regulation, the LSC Board of Directors advised:

Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient’s letter acknowledging the contribution. For contracts and grants awarded prior to the enactment of the restriction, notice should be given prior to acceptance by the recipient of any additional payments.

The notice requirement applies to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the nonprofit work of the recipient.⁹⁶

A review of CRLA’s accounting and financial records indicates general compliance with 45 CFR Part 1610.

Accordingly, in the Draft Report, LSC recommended that CRLA ensure it provides 45 CFR § 1610.5 notification to funding sources which exceed \$250 in advance, where practicable. In response to this recommendation, CRLA notes that since January 1, 2011, it has included the full § 1610.5 notice language in all individual finding source acknowledgements. See page 37 of the CRLA Response.

⁹⁵ The LSC reviewers did note that Pro Bono Legal Services stores its files in a common area. LSC would recommend that CRLA ensure its files are not similarly stored in a common area. In response to this note, CRLA advises that these file cabinets have been relocated in private CRLA offices which are locked at night. See the CRLA Response at 43.

⁹⁶ 62 Federal Register 27696 (May 21, 1997).

Finding 17: CRLA is in substantial compliance with 45 CFR § 1614.3 (d)(3) which requires oversight and follow up of Private Attorney Involvement ("PAI") cases. Moreover, CRLA is in substantial compliance with 45 CFR § 1614.3(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities.

As a prefatory note, due to CRLA's Response, this section has been substantially revised from the Draft Report. As explained below, CRLA has made significant changes to its PAI program and many of the preliminary findings from the draft report are obsolete and have been withdrawn.

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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

Since 1982, CRLA has implemented PAI strategies designed to involve private attorneys in the delivery of legal services to eligible clients in the areas of housing, education, labor, civil rights, family security, and public benefits law. At the time of the on-site review, CRLA had a part-time PAI Coordinator, who was also the Directing Attorney of the Madera office. Following the review, CRLA began an extensive overhaul of its PAI program. On July 30, 2012, CRLA hired a new Pro Bono Coordinator who is based in the Central (San Francisco) office. Since that time, the Pro Bono Coordinator has been in extensive communication with LSC to modify and improve the delivery of legal assistance. This has involved working with LSC staff to ensure legal assistance is provided in an efficient and effective manner throughout its service area. As noted above, because of the substantial and on-going change in the delivery of pro bono assistance, much of what was stated in the report is obsolete and has been withdrawn. Moreover,

the required corrective action items set forth in the draft report have been addressed. LSC commends and encourages CRLA to continue to consult with LSC staff as necessary to implement any additional changes or challenges it faces.

With respect to expenditures and allocations, the Audited Financial Statement (“AFS”) for Fiscal Year Ending December 31, 2010 correctly reported expenditures dedicated to the PAI effort as required by 45 CFR § 1614.4(e)(2). The AFS reported a total of PAI expenditures of \$782,371 which translates to 14.1% of CRLA’s total basic field grant (\$5,542,782), complying with the 12.5% requirement. The review of the spread sheet and costs on the General Ledger report allocating PAI staff salary for the calendar year ending December 31, 2010 disclosed that CRLA correctly allocates the salaries of attorneys and paralegals on total workable hours, supported by time records and 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). During the on-site review of the PAI documents and interviews with the accounting staff, it was discovered that CRLA was underreporting several PAI costs. Specifically, it was found at that time that the PAI Coordinator was not fully reporting time to PAI in that, on several occasions, where travel expenses incurred had been charged to PAI, no time was reported in the PAI Coordinator’s timekeeping records. In addition, it was noted the Executive Director’s salary is not being allocated as indirect cost on a percentage of his salary as a PAI cost. CRLA has made revisions to its operations and has indicated that it will account for these costs.

Several costs allocated to PAI in 2010 and 2011 through September were reviewed and were found to be related to PAI activities, and fully documented and approved.

Accordingly, there are no continuing required corrective action items to be implemented.

Finding 18: CRLA 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 and 45 CFR § 1627.2(b)(1) which requires LSC approval of payments made to attorneys in excess of \$25,000.00 .

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.⁹⁷ 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

⁹⁷ 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.

law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

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

A limited review of accounting records and detailed general ledger for 2009, 2010 through September 2011, disclosed that CRLA is in compliance with 45 CFR § 1627.4(a); all non-mandatory dues and fees are being paid with non-LSC funds. The majority of dues and fees are being paid with non-LSC funds and/or allocated when required and in compliance with 45 CFR § 1627.4(a).

There are no recommendations or corrective actions required.

Finding 19: CRLA is in compliance with 45 CFR Part 1635 (Timekeeping requirements) which requires that attorneys and paralegals who work 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. Individual time reporting needed to be improved.

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.

Presently, there are two (2) staff members who work part-time for other organizations that engage in restricted activities, for which certifications have been provided and approved. The review of corresponding certification, time sheets, and payroll indicates that the staff members have been paid based upon the amount of hours worked excluding time that was approved to work for the organization that engages in restricted activities.

As previously noted, CRLA utilizes LegalServer for case and time management purposes by advocate staff. The CRLA Timekeeping Policy requires each advocate to record 100% of time, including time on leave and holidays and all time worked beyond the advocates regularly scheduled hours. Time reported on time sheets must be consistent with the time reported in ACMS.

Time reporting for payroll purposes is every two (2) weeks, utilizing pre-dated electronic timesheets forwarded to each employee by the payroll manager. Separate timesheets are designed for exempt/non-exempt and full/part-time staff. Timesheets are prepared by the employee and forwarded to their supervisor who affixes an electronic approval and forward the timesheet to the Accounting Department. Payroll processing is conducted utilizing ADP provided software with the exception of control of comp time which is done by a CRLA developed spread-sheet.

An unscientific random sample of advocate compliance was made by selecting four (4) advocates, each located in a different office, and comparing their ACMS recordings to payroll timesheets for the months of January and July 2011. Procedural compliance ranged from a norm of a 100% data match (one), minimal variation (two) and substantial differences (one). Based on this review, the problem does not appear to be systemic or training, but a matter requiring managerial control. The deviations in one employee's case were significant and have potential fiscal impact. The employee customarily recorded significantly more hours on his Payroll Timesheet than reflected in his CMS entries, many of which did not even total his regular workday. This was compounded by the employee reporting the taking of compensatory time leave of 7.5 hours in his CMS entries on a day on which his payroll timesheet entry shows none taken and in fact .5 hours earned. As a result of these actions, the employee's compensatory time accumulation, use, and balances were called into question and LSC recommended this should be the subject of an internal audit. LSC recommended that management take steps to ensure compliance with CRLA policies.

In the Draft Report, it was also recommended that CRLA consider seeking technical assistance to determine the feasibility of utilizing the Legal Server Case/Time Management System for contemporaneous entry of all work time which would enforce the timely entry by all staff. Data

downloaded from the ACMS would be the basis for staff entries on the payroll summary approved by supervisors and submitted to Accounting each pay period. In its Response, CRLA stated:

An Excel macro was written in 2011 that could convert an exported time detail report from our ACMS into a payroll timesheet ready for supervisor review and approval. That version, however, worked only for exempt employees. (A macro for non-exempt employees is more complex due to the need to record starting and ending work times.) The design, however, did not accommodate CRLA's reduction-in-hours that was effected January 1, 2012 and rescission of that reduction on July 1, 2012. There also continue to be issues with achieving a macro capable of handling work schedules that vary. Currently, our estimated completion date for the macro for exempt employees is September 30, 2012; our estimated completion date for the macro for non-exempt employees is December 31, 2012.⁹⁸

Accordingly, there are no continuing required corrective action items to be implemented.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.⁹⁹ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.

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

None of the sampled file reviewed indicated non-compliance with this Part.

⁹⁸ CRLA Response at 43.

⁹⁹ The regulations defined "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

There are no recommendations or corrective actions required.

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

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

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. The program policies with respect to these activities also incorporate by reference the LSC regulations set forth at Part 1612.

CRLA procedures provide for the administrative tracking and reporting for restricted activities undertaken pursuant to Part 1612. Activities are tracked by an assigned annual sequential number and personnel time is tracked using the LegalServer data. An Excel spreadsheet is utilized to monitor the activity for LSC reporting purposes.

CRLA has established (and recently revised written policies pending approval) governing Legislative, Administrative and Other Policy Advocacy. The current Policy requires that each advocate must record all time and expenses for each Cohen-Bumper activity utilizing the CRLA CMS, Legal Server. Accounting staff utilizes LegalServer reports to determine Cohen-Bumper time expended and determine whether an adjusting journal entry is required to ensure an appropriate funding source (non-LSC) is charged.

Of a sample of 20 activities reviewed, all were properly and consistently reported. It was determined that of the legislative activities reviewed, CRLA was either responding to a notice for public comment (or it's related or local equivalent) pursuant to 45 CFR § 1612.6(e), or was invited to testify, or invited to provide written oral comments on pending or considered legislation, or otherwise communicate with legislators or their staff pursuant to 45 CFR § 1612.6(f).

During the review, all written testimony submitted by CRLA contained in the selected sample, was reviewed. This review indicated that the testimony related to CRLA's areas of expertise, such as use of pesticides, heat stress for agricultural workers, rural housing, rural health, etc., all match the requests from the California legislature and state and local government agencies.

The regulations further provide at 45 CFR § 1612.6(b):

Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that made the request and to other persons or entities only to the extent that such distribution is required to comply with the request.

During the review, no evidence was found that CRLA improperly distributed its communications to parties not within the scope of the request.

If a recipient engages in activities permitted pursuant to 45 CFR § 1612.6 it may not use LSC funds for such activity; this includes "administrative overhead or related costs." 45 CFR § 1612.10(a). The review of the books and records of CRLA conducted by a fiscal reviewer, indicate that CRLA has appropriately accounted for these expenditures and did not use LSC funds to support these activities. CRLA's expenditures of non-LSC funds for legislative and rule making activities permitted by 45 CFR § 1612.6 were found to be based on direct time contemporaneously recorded on payroll time sheets by case handlers and related overhead costs were allocated to non LSC funds based on these direct expenditures.

At 45 CFR § 1612.6(c) the regulations prohibit recipient employees from soliciting or arranging for a request to testify or otherwise provide information in connection with legislation or rule making. No evidence was found that CRLA employees had solicited requests for testimony or comments.

Further, the regulations require at 45 CFR § 1612.10(b):

Recipients shall maintain separate records documenting the expenditure of non LSC funds for legislative and rule making activities permitted by 45 CFR §1612.6.

While CRLA was able to provide records documenting that it did not use LSC funds to support these activities, it did not have separate records which document this. However, CRLA does maintain its fiscal records in such a way that it was able to pull the relevant records requested. As such, and as recommended during the review of Part 1612 in 2007, and in the Draft Report, CRLA should open a separate file for each 45 CFR § 1612.6 activity and keep the request, and the response and copies of the relevant fiscal records in each file. CRLA reported that it was on its way to resolving this issue.

In reply to this recommendation CRLA provided an extensive discussion, which may be read at pages 43-45 in the attached Response. In brief, CRLA asserted that its methods of maintaining separate documentation are in compliance with the LSC regulations. Nevertheless, CRLA has made modifications to its recordkeeping including the maintenance of a hard copy file of supporting documentation. In addition, CRLA has modified its Wiki-based Advocacy Manual. Accordingly, no further action is required.

During the course of the review, CRLA's policies and procedures were examined. 45 CFR § 1612.11 requires "[e]ach recipient [to] adopt written policies and procedures to guide its staff in complying with this part." The documentation reviewed and interviews with CRLA staff and management indicate that CRLA has adopted and disseminated the required policies and procedures. Moreover, CRLA continues to monitor policies to improve record keeping and

reporting systems. Management and staff were interviewed who deal with requests by the legislature and government agencies. The interviews indicated that management has a thorough knowledge of § 1612.6 and Part 1612 in general. Further, CRLA management demonstrated a thorough understanding of the appropriate parameters for responding to requests for CRLA's testimony pertaining to its areas of expertise.

45 CFR § 1612.10(c) requires that the recipient file semi-annual reports with LSC describing their legislative activities with non LSC funds pursuant to 45 CFR § 1612.6. In comparing the reports with the requests and responses, it was found that CRLA had properly filed these reports.

A test of ACMS records, payroll timesheets and travel vouchers was made for a random non-scientific selection of four advocates who were identified in CRLA documentation as participating in Part 1612 activities. In each case where Part 1612 activity was recorded, appropriate non-LSC funding was reflected.

High Speed Rail Activities: 45 CFR Part 1612 concerns

The Madera and CEI offices represent clients who will be impacted by construction of high speed rail ("HSR") in their communities.¹⁰⁰ Both the Madera and CEI office submitted comments to the California High Speed Rail Authority ("HSR Authority") on October 12, and 13th, 2011, challenging the draft Environmental Impact Report/Environmental Impact Statement ("HSR Draft Report"). After the conclusion of the visit, CRLA provided the comments submitted by the Madera office, the CEI office,¹⁰¹ and copies of the subject client retainer agreements, together with email correspondence.

The comments to the HSR Draft Report were submitted on behalf of CRLA clients. CRLA's Madera office indicated it was submitting comments on behalf of clients who were members of protected communities (low-income, minorities, farmworkers and Native Americans) in the six (6) county areas from Merced to Kern of the Southern San Joaquin Valley, while the CRLA CEI office specifically identified its three (3) retained clients on whose behalf it was submitting its comments. CRLA's comments challenged the HSR Authority's failure to adequately meet the public participation requirements required by law, the failure to properly identify disproportionate impacts to the Environmental Justice ("EJ") populations, and the failure to include adequate steps to mitigate negative impacts or propose alternate measures to mitigate the negative impacts of high speed rail to the EJ population and communities of concern. CRLA's CEI office also addressed housing concerns as it was jointly filed with the Center for Race, Poverty, and the Environment.

In the Draft Report, OCE stated:

¹⁰⁰ See Case No. 11-0284849.

¹⁰¹ These comments were submitted jointly with the Center on Race, Poverty, and the Environment, an organization that appears to engage in LSC restricted activities.

The comments may pose Part 1612 concerns because CRLA's comments address the general, systemic problems faced by the EJ populations, rather than the particular wrongs committed against retained clients. For example, the comments challenged the HSR Draft Report because it did not engage the EJ community with meaningful participation. In support of this contention, the comments identify the number of meetings held by the HSR Authority in EJ communities compared to those held with the business, development, and agribusiness communities, and concludes that the HSR Authority's "public outreach failed to adequately inform the public, and denied communities of concern a meaningful opportunity to participate in the HSR EIR process." The comments further address the global socio-economic impacts of the HSR project, and the failure to mitigate these impacts on EJ communities, rather than limiting its comments to the impact the failure of outreach had on the retained CRLA clients.

Secondly, the comments may pose Part 1612 concerns because CRLA requested the HSR Authority take action to assist the EJ populations, rather than retained clients. CRLA advocated for remedies to address public rights, benefits, and interests of EJ populations as a whole, rather than advocating for remedies limiting to addressing private rights of retained clients. CRLA further made clear that it is advocating on behalf of all EJ populations, and not on behalf of particular clients, when it advised the HSR Authority as to the goals and aims of the low-income community with respect to high speed rail. This is clearly illustrated in the concluding comments of the Madera office which informed the HSR Authority that "the minority, low-income and Native-American populations do not wish to prevent the Project. They are trying to prevent a large number of families from being displaced and the resulting disintegration of their communities. What the EJ communities wish is a report that sets forth a long term economic development vision matched by well-articulated mid-term strategies at the regional level with immediate targeted programs that allows them to access the community benefits locally, i.e., jobs."

CRLA's Madera office further indicated that it stands ready to enforce the obligations of the EJ population, "would like to actively participate in the process," and "provide additional comments" to the HSR Authority. Comments from CRLA's CEI office "urge(s) the HSR Authority to work together with the disadvantaged unincorporated communities discussed throughout the EIR, including all those neighboring Proposed Heavy Maintenance Facility locations, to achieve a public comment process that is inclusive and comprehensive."

CRLA's Madera and CEI offices argued that the above described comment submission is permissible under LSC Act, regulation, and other authorities because it is a required administrative law procedure. CRLA is exhausting administrative remedies prior to filing civil suit to enforce its client's rights to mitigation of negative impacts, and other relief available for retained clients.

However, OCE’s review of the content of the comments indicate that CRLA may have exceeded this purpose and may in fact be advocating on behalf of all members of protected communities and influencing public policy.

Nevertheless, at this point, OCE does not take a position either that there has or has not been a violation of 1612. With its comments to the Draft Report, CRLA is requested to submit its position as to why this representation is consistent with the LSC regulations.

In response to this invitation, CRLA provided similarly extensive comments, which may be viewed in full at pages 45-48 of the attached CRLA Response. In brief, CRLA noted that its actions were pre-litigation efforts designed to both preserve its clients’ rights and to resolve the case in advance of litigation. CRLA notes that the fact that its clients’ interests are congruent with the interests of the general public make the argument for the individual client stronger and that the restrictions set forth in 1612 do not – and cannot – impinge on their First Amendment rights and duties on behalf of their clients to advance all pre-litigation strategies.

LSC is evaluating this issue and will communicate its findings under separate cover.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient’s policies also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-

counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁰²

None of the sampled files reviewed involved initiation or participation in a class action. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

None of the sampled files reviewed revealed participation in litigation related to redistricting. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

None of the sampled files reviewed involved defense of any such eviction proceeding. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in this prohibited activity.

¹⁰² 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.

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. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁰³ This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature, indicated program involvement in such activity. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies and fiscal records, also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

¹⁰³ *See* Section 504(a)(18).

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

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

None of the sampled files reviewed involved such activity. Interviews with the Executive Director, two (2) DLATs, and several Directing Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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.

None of the sampled files reviewed evidenced non-compliance with the above LSC statutory prohibitions. Interviews with the Executive Director, two (2) DLATs, and several Directing

Attorneys and review of the recipient's policies also confirmed that CRLA is not involved in the aforementioned prohibited activities.

There are no recommendations or corrective actions required.

Finding 30: CRLA 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.

Interviews with the Executive Director evidenced that CRLA 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. The Executive Director provided the signed agreements for review during the on-site visit.

There are no recommendations or corrective actions required.

Finding 31: Policies reviewed evidenced compliance with the requirements of 45 CFR Part 1644 (Disclosure of case information).

In accordance with 45 CFR Part 1644, recipients are directed to disclose to LSC and the public certain information on cases filed in court by their attorneys. 45 CFR § 1644.3 requires that the following information be disclosed for all actions filed on behalf of plaintiffs or petitioners who are clients of the recipient:

- a. the name and full address of each party to a case, unless the information is protected by an order or rule of court or by State or Federal law, or the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;
- b. the cause of action;
- 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.

As noted *infra* in Finding 2, the Administrative Legal Secretary in each office prepares the materials for the filing of the 1644 report concurrent with the preparation and approval of the LAP. Review indicated that CRLA's policies and practices for the submission of the Disclosure report are in compliance with 45 CFR Part 1644.

There are no recommendations or corrective actions required.

Finding 32: A limited review of CRLA’s internal control policies and procedures demonstrated that the program’s policies and procedures compare are sufficient to meet the requirements with the elements outlined in Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC’s Accounting Guide for LSC Recipients (2010 Edition) 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 Edition).

The Accounting Guide for LSC Recipients 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.

Internal Controls and Documentation

Inasmuch as CRLA is currently reviewing and revising its policies and procedures and will be making these available to staff at its on-line wiki site, it is recommended that the CRLA Controller review CRLA policies which may impact fiscal activities which utilize the ACMS or other record keeping requirements. A concurrent review of the CRLA Accounting Manual in light of Appendix VII of the Accounting Guide for LSC Recipients (2010 Edition) (Accounting Procedures & Internal Control Checklist) could serve to validate current procedures.¹⁰⁴

Travel Vouchers

The CRLA Accounting Manual establishes a Travel Reimbursement Policy. This is supplemented or amended by the LSWRC/CRLA Collective Bargaining Agreement currently in force. A non-scientific random sampling of five (5) advocates in separate offices was selected

¹⁰⁴ See http://www.lsc.gov/pdfs/accounting_guide_for_lsc_recipients_2010_edition.pdf (last accessed on September 26, 2013).

and all travel vouchers for each for the year 2010 were examined. In all cases, vouchers were completed and signed by the employee and approved by the supervisor (in one case by email). The vouchers include a statement of travel purpose and segregates non-reimbursable expenses, usually direct payments by the Program credit card for hotel or auto rental. Expenses (other than mileage) were documented by receipts or in rare occasions, where not available, by a program form developed in lieu of receipt. It was noted that while the CRLA Accounting Manual requires the filing of vouchers within 45 days of travel, this was not adhered to and, in one (1) case, an employee submitted nine (9) months of travel expenses totaling \$10,484.96 in January of the following year. To preclude budget or cash-flow impact, management action should be taken to ensure compliance with CRLA Policies.

Personnel Manual

The CRLA Personnel Manual dates from the 1970's and is substantially outdated. A significant portion of this document has been superseded by the Collective Bargaining Agreement with the Legal Service Workers of Rural California, National Organization of Legal Service Workers, United Auto Workers Local 2320, AFL-CIO. Additional policies and direction are on-line at CRLA's wiki site which includes office operations and advocacy manuals which are being developed with the assistance of a consultant.¹⁰⁵ While not fully complete, the site is the best "in-house" policy and procedure information available to staff and it is recommended that staff be trained in its use expeditiously as it comes on-line.

Cost Allocation System

The CRLA Accounting Manual contains a section on Cost Allocation. Additionally, the CRLA Controller prepares annually, a Cost Allocation Plan defining funding source parameters and methodology for determining direct and indirect costs. The primary data source is the advocate time recorded by funding source in the ACMS.

LSC's rules regarding allocations among funds are set forth in 45 CFR Part 1630.¹⁰⁶ Additionally, some functional programs such as the Private Attorney Involvement have specific requirements such as the recipient's administrative, overhead, staff, and support costs related to PAI activities shall be allocated on the basis of reasonable operating data, while direct costs must

¹⁰⁵ For more information on the CRLA Wiki-based Advocacy Manual, see CRLA's response to the Draft Report appended to this Final Report.

¹⁰⁶ See 45 CFR § 1630.3(f) Allocation of indirect costs. Where a recipient has only one major function, i.e., the delivery of legal services to low-income clients, allocation of indirect costs may be 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. The 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. (g) Exception for certain indirect costs. Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to Corporation funds, provided that the activity associated with the indirect cost is permissible under the LSC Act and regulations.

be based on contemporaneous time recordings.¹⁰⁷

The allocation process as defined is adequate to meet LSC requirements; however its application requires improvements in collateral activities. For instance, though plainly required by CRLA policies, it was noted that from at least 2008 to date, the CRLA designated PAI coordinator had not recorded any of his work time as PAI within the Legal Server system. A review of travel vouchers and staff time reports in fact reflect PAI activity, however the default “no” to record time as PAI had not been checked “yes.” It is recommended that staff training be conducted to ensure compliance with CRLA policies.

Derivative Income

LSC considers derivative income as any additional income derived from an LSC grant, such as interest income, rent or the like, or that portion of any 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 from 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.¹⁰⁸

The CRLA Accounting Procedures Manual has a Revenue Recognition policy¹⁰⁹ however it does not appear to contain any procedures relating to the allocation of derivative income. 45 CFR § 1630.12 requires that 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 addition to such items as interest income, income from functional activities supported by LSC funding (i.e. clinics, trainings, fund raising, etc.) must be recorded as derivative income. Review of current processes found that derivative income is being allocated, (i.e. Interest income, rental revenue as well as \$75,461 of the total \$135,976 of Attorney fees and costs were allocated to LSC for 2010¹¹⁰) however, the allocation policy for derivative income and allocation process should be

¹⁰⁷ See 45 CFR § 1614.3(e)(1) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented

¹⁰⁸ Section 1630.12 Applicability to derivative income: (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. (b) Derivative income which is allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part, including the requirement of 45 CFR § 1630.3(a)(4) that expenditures of such funds be in compliance with the 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.

¹⁰⁹ See CRLA's Accounting Manual, at page 82.

¹¹⁰ See CRLA's 2010 annual audit report.

documented in the CRLA Accounting Manual.

There are no recommendations or corrective actions required.

IV. RECOMMENDATIONS¹¹¹

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

1. Consider backing up its CSR data at the time of submission to LSC, so that this data can be easily retrieved for analysis;

In response to the Draft Report, CRLA provided a schedule demonstrating various levels of data backup ranging from local backup throughout the day to nightly backup and storage. *See* the CRLA Response at 34. By way of further clarification, this recommendation was intended to ensure that the CSR data is archived at the time of submission so that accurate case lists can be generated. As noted in the CSR Handbook (2008 Ed.), at § 3.4 “When necessary to determine the accuracy of case service information, programs shall have the capacity to generate a detailed listing of open and closed cases to support case service information reported to LSC.” *See also*, the June 16, 2011, document request letter from LSC to CRLA at 1: “A list of all cases reported to LSC by CRLA in its 2009 CSR data.”

2. Periodically review its open case lists, program-wide, to ensure timely closure of completed case files;

In response to the Draft Report, CRLA advised that an upgrade to LegalServer was being developed for another user of LegalServer and will be made available to all users by the end of 2012. In the meantime, CRLA provides an interim solution which should address these concerns. *See* the discussion at pages 34-36 of the CRLA Response.

3. Ensure proper application of the CSR problem code categories and provide staff with training regarding these policies;

Comments to the Draft Report indicated that CRLA will provide further training. *See* page 36 of the CRLA Response.

4. Revise its Intake Form so that there is a place for the reviewer to document the date upon which the applicant’s eligible alien status was reviewed by CRLA;

In response to this recommendation in the Draft Report, CRLA has modified its Intake Questionnaire. *See* the CRLA Response at 36-7.

¹¹¹ 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.

5. Review its conflicts check practices to pre-screen for conflicts prior to obtaining confidential information from applicants;

In its response, CRLA has provided information demonstrating it is making revisions to ensure pre-screening for potential conflicts. *See* page 37 of the CRLA Response.

6. Ensure it notifies funding sources exceeding \$250 with written notification of the prohibitions and conditions on use of the funds resulting from the receipt of LSC funding pursuant to 45 CFR § 1610.5 and

In its response, CRLA noted that since the beginning of 2011, it has induced the full §1610.5 notice language in all individual donor acknowledgements. *See* page 37 of the CRLA Response.

7. Review its co-counseling case closing practices to develop a consistent methodology for determining whether to close co-counseling cases as staff or PAI cases.

In its response, CRLA noted that this recommendation is addressed in its response to Corrective Action item 6. *See* page 37 of the CRLA Response.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that information necessary for the effective management of cases is accurately and timely recorded as follows:
 - a. Review the ACMS so as to ensure that the cases are re-opened in accordance with the CSR Handbook (2008 Ed.), § 6.3;
 - b. Ensure that protocols are developed so that management reviews and reconciles the paper and electronic intakes during its closing review;
 - c. Ensure that any changes made to the ACMS during the pendency of the case is concurrently made to the paper case files; and
 - d. Provide training to its staff to ensure that all PAI cases are reported in accordance with the requirements and definitions of CSR Handbook (2008 Ed.), § 10.1, the LSC Act, regulation, and other applicable law, and that all files are re-opened in accordance with the CSR Handbook.

Comments to the Draft Report indicate that CRLA has taken the following actions. With respect to item 1.a., CRLA initially “locked” the ACMS so that only the Administrator may re-open cases. Additionally, it has sought to make long-term modifications to the ACMS. *See* CRLA Response at 2-3. With respect to item 1.b., CRLA has taken appropriate steps to ensure that its paper and electronic intake forms are reconciled. *See* CRLA Response at 3-4. LSC also notes and commends CRLA for its exploration of paperless intake process in a careful and deliberate manner. With respect to item 1.c., has revised its Advocacy Manual to include a specific step ensuring the Directing Attorney will review paper and electronic information to ensure consistency. *See* CRLA Response at 4-5. Based on the information provided, each of these actions is sufficient to address the concerns raised in the report.

With respect to the final item on this list, item 1.d., the CRLA Response, at 5-6, expressed the program’s intent to take the requested corrective actions in a measured and considered manner. As noted in the Response, CRLA’s actions in this regard actually started prior to the on-site review and those which were completed were reviewed by the team during the on-site review. Due to exigent circumstances, CRLA had not completed this task at the time of the submission of the Response, but established a goal of completing this work by November 30, 2012. To ensure that this is implemented, CRLA is directed to provide OCE with a status update within 30 days of the issuance of this Final Report.

2. Ensure that the eligible alien status of telephone applicants and the date of the inquiry are documented, pursuant to Program Letter 99-3 and 45 CFR § 1626.7;

In response to the Draft Report, CRLA has provided a revised standard Intake Questionnaire, which includes a portion for recording eligible alien status for telephone intakes. Although CRLA indicated it had not adopted this at the time comments were submitted, the form provided is sufficient to address this concern. *See* CRLA Response at 6 and Exhibit B. To ensure that this is implemented, CRLA is directed to advise OCE within 30 days of the issuance of this Final Report whether this form has been adopted.

3. Ensure it collects dated citizenship attestations and records how and when alien eligibility is determined as required by 45 CSR Part 1626, and CSR Handbook (2008 Ed.), § 5.5.

Following the issuance of this report, CRLA called attention to some ambiguity in this corrective action item. Accordingly, LSC has modified the corrective action item. As noted above, in response to item 2, CRLA has revised its Intake Questionnaire, which addresses this concern; this item has been completed.

4. Ensure that over-income applicants are screened in a manner consistent with board intent. In its comments to the Draft Report, CRLA should clarify the board's direction on this matter and action taken to ensure consistent implementation;

In response to the Draft Report, CRLA provided information and documentation showing that its Executive Committee of the Board of Directors would review a draft policy at its August 4, 2012 meeting which would be reviewed by the full Board at a later meeting. *See* CRLA Response at 8-9. To ensure that this is implemented, CRLA is directed to advise OCE within 30 days of the issuance of this Final Report whether this policy has been adopted. If not, LSC will follow-up on this separately.

5. Make the following two (2) technical changes to its financial eligibility policy:
 - a. Clarify the asset policy so that the three (3) benefits listed (TANF, General Relief and SSI) are clearly identified as the sole exceptions or, if there are other benefits which meet this requirement, they should be identified in the policy; and
 - b. The policy excludes from consideration assets that are exempt from attachment under state or Federal law, without specification; CRLA must specifically list in its policy those assets it intends to exempt from consideration;

In response to the Draft Report, CRLA provided proposed revisions to its policy incorporating the recommended changes. *See* CRLA Response at 9-10. Both amendments are responsive to the concerns set forth in the Draft Report. In order to close out this item, CRLA is directed to advise OCE within 30 days of the issuance of this Final Report whether this policy has been adopted. If not, LSC will follow-up on this separately.

6. Conduct a review of its PAI program to ensure that cases are reported and time is recorded in accordance with the CSR Handbook (2008 Ed.), Chapter X and 45 CFR Part 1614.¹¹² The corrective action should include training of all staff involved in handling or coding PAI cases;

As discussed above, CRLA has substantially revised its PAI efforts and much of the text of the draft report was withdrawn. Moreover, CRLA has worked with LSC to ensure its efforts at revision are being done in a manner to ensure compliance. Accordingly, this corrective action item has been completed. The same is true for the next two required corrective action items.

7. Ensure that PAI case files clearly document the level of service provided to clients to support the closing code assigned and provide staff with training regarding these policies;

This has been completed. See Item 6, above.

8. Have the PAI Coordinator report all of his time related to the PAI effort as required by 45 CFR § 1614.3(1)(i), and a percentage of the Executive Director's salary should be allocated to PAI as indirect involvement on PAI related activities;

This has been completed. See Item 6, above.

9. Provide an explanation as to whether legal advice or legal assistance is provided during these clinics, if and when eligibility information is gathered and when an eligibility determination is rendered;

In response to this item in the Draft Report, on Corrective Action Items 9 and 10, CRLA has provided an explanation which may be found at pages 20-33 of its Response. With respect to a portion of Corrective Action Item 9, the CRLA response provides a full and complete factual and legal analysis. Accordingly, no further information is required. As discussed in the report, some of the discrepancies noted were incorrect observations which have been modified or withdrawn. With respect to other concerns, see Corrective Action Item 10, next.

10. Cease the practice of providing (and reporting) the same level of assistance as a case for an eligible client and as another service for an ineligible client; and

In response to this item, CRLA has provided extensive legal analysis which indicates that LSC's regulations and the law place the local attorneys on the horns of a dilemma. See pages 20-33 of its Response. In order to alleviate these concerns, CRLA advises,

¹¹² To assist CRLA, LSC provided a chart of PAI time and coding protocols prepared by another legal services program at the exit conference.

We propose to achieve compliance with the CSR Handbook by abandoning our practice of processing those clinic attendees who meet briefly with private attorneys through our intake and eligibility procedures and then reporting qualified individuals as cases; henceforth, we will simply treat and report all attendees as CSR matters.

By taking this action, CRLA has satisfied the concern raised in the Draft Report and LSC considers this required corrective action item closed.

11. Ensure the Santa Rosa office has implemented its new procedures to ensure that all legal assistance provided by the private attorney is accurately documented and that reported as PAI cases. A description of the procedures should be provided.

In response to the Draft Report, CRLA indicated it has revised its procedures to ensure that this legal assistance is properly documented and reported. *See* the CRLA Response at 33-34. Accordingly, LSC considers this required corrective action item closed.

CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.



July 24, 2012

[via Electronic Mail and U.S. Postal Service]

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RE: OCE Draft Report re Case Service Report/Case Management
Systems review of California Rural Legal Assistance, Inc.

Dear Ms. Rath:

California Rural Legal Assistance, Inc. (CRLA) is grateful for this opportunity to respond to OCE's CSR-CMS Draft Report issued April 24, 2012.

We initially wish to express our appreciation to OCE for the highly professional and cooperative approach exhibited by the Audit Team prior to and during our October 2011 on-site audit. Particularly gratifying was the Team's across-the-board display of interest in our advocacy and in assisting CRLA to become an ever-more effective recipient of LSC's grants.

We hope that LSC is, as are we, encouraged by the fact that the Draft Report's Executive Summary lists 32 "Findings" of which:

- 24 find CRLA in "compliance";
- 4 find CRLA in "substantial compliance";
- 2 - addressing CRLA policies and procedures - find them to be "sufficient";
- 1 - referencing a CRLA procedure and our ACMS system - finds it to "generally support"; and,
- 1 - referencing our application of the CSR case-closure categories - "is not consistent."

Of course, the Draft Report presents a number of Corrective Actions and Recommendations that we recognize will strengthen our management of our federal (and other) grants and strengthen our advocacy. The 70-page text is nuanced and raises a number of concerns; we are particularly grateful that OCE has explicitly asked us to take this opportunity to explain certain CRLA positions. To the extent that any of our accompanying responses continue to either leave OCE's concerns less than fully answered, we look forward to opportunities to continue our discussions.

Lora Rath, Acting Director
July 24, 2012
Page 2

We believe our accompanying response demonstrates that we have implemented, and are implementing Corrective Actions and many of the Recommendations set forth in the Draft Report. Nevertheless, our progress toward fully implementing these has been less than we desired, as have been the cases for continued implementation of our very comprehensive Strategic Plan (which includes more rigorous planning and evaluation of our advocacy in compliance with recently-adopted Core Expectations) and implementation of a completely revised, Wiki-based Advocacy Manual. Our implementation schedules anticipated last October during the Audit Team's visit have been significantly delayed - but not, we emphasize, stopped - by a number of challenges that have confronted CRLA since October, 2011.

Federal funding cutbacks have amounted to \$ 1,200,000. State and private-source reductions of an additional \$524,000 have increased our overall loss to over \$1.7 million since October 31, 2011. As a result, CRLA has reduced staffing by nine attorneys, four Community Workers/paralegals, and nine support staff, and implemented a salary reduction during the first six months of 2012. When the Audit Team visited in October, both our Deputy Director and Director of Human Resources positions were vacant. Although we filled those voids at the beginning of February with an exceptionally experienced person, his unexpected departure in June leaves these positions currently vacant. Meanwhile, our Director of Community Programs (one of our most experienced advocates) is also departing, and the most senior of our four Directors of Litigation, Advocacy and Training is transitioning from full to part-time to anticipated retirement. Of particular concern to CSR-CMS issues was the retirement at the beginning of March of our extremely experienced Administrative Director of Training, Technology and Other Support. Here, we have been extremely fortunate in filling the vacancy with extraordinary and equally capable replacement, but transitions inevitably intrude upon implementing changes.

We organize our comments to the Draft Report (hereafter, sometimes "DR") as follows:

- *First*, we first respond to the eleven Corrective Actions (C.A.s) in the order presented at pages 69 -70; within this context we further respond to various Findings throughout the text that appear to be incorporated or otherwise serve as the bases for the respective C.A.s.
- *Next*, we turn to the eight formal Recommendations, again in the order presented at page 68; again, we further respond to a number of Findings throughout the text that appear to be the bases for these recommendations.
- *Finally*, we address an additional number of Findings which, although not necessarily incorporated into or corresponding to formal C.A.s or Recommendations, appear significant or which OCE has expressly asked us to further comment upon.

We differ with a limited number of factual observations or conclusions in the DR for which we

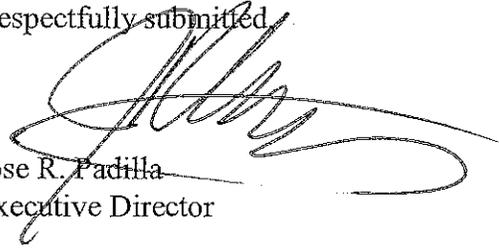
Lora Rath, Acting Director

July 24, 2012

Page 3

assume responsibility of having communicated less precisely or completely than the Audit Team deserved. As we observed at the beginning of this Introduction, we deeply appreciate the Team's efforts, interest and support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jose R. Padilla', written over a horizontal line.

Jose R. Padilla
Executive Director

Encl. CRLA Comments in Response to OCE Draft Report

CRLA COMMENTS IN RESPONSE TO OCE DRAFT REPORT
CSR-CMS Audit - October 17-28, 2011

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CRLA COMMENTS IN RESPONSE TO CORRECTIVE ACTIONS

Corrective Action No. 1:

Ensure that information necessary for the effective management of cases is accurately and timely recorded as follows:

We note some events that have occurred since the Audit Team's visit in early November, 2011. In late March, 2012, Julie Hall succeeded Karen Smith as CRLA's current Administrative Director of Training, Technology and Other Support ("Training/Technology Director"). Ms. Hall was formerly the Administrative Legal Secretary in CRLA's Marysville office and for a number of years had assisted Ms. Smith in developing processes and training for CRLA's ACMS ("LegalServer"). Since her appointment, Ms. Hall has been exceptionally focused upon not only further developing her personal skills but in further improving CRLA's capacity to utilize LegalServer effectively.

In early June, 2012, Ms. Hall attended the First Annual LegalServer Site Administration National Training. Subsequently, she has distributed to staff and provided training on two manuals that were distributed at the National Training, one of which focuses on cases, timekeeping, outreach, calendar and reports.

Also in early June, LegalServer launched a new LegalServer Community Site that provides resource information about LegalServer and includes the above-mentioned manuals, forums and an extensive Wiki.

The free LegalServer Webinar Training Schedule is posted on our network, available to all staff.

As you are aware, LegalServer is a proprietary web-based case management system owned by PS Technologies, Inc. ("PSTI") with a unique web site for each client. Within certain parameters, and at additional cost, LegalServer can be customized to meet the client's needs.

- a.** *Review the ACMS so as to ensure that the cases are re-opened in accordance with the CSR Handbook (2008 Ed.), § 6.3;*

Short-Term Response: Our ACMS has been locked so that only the Administrator, Ms. Hall, can re-open cases. Local offices wishing to re-open a LegalServer record must submit a request to the Administrator who assesses whether re-opening is appropriate. Her responses to the local offices include a detailed explanation including supporting documents from, inter alia, the CSR Handbook, LSC Regulation and/or CRLA Advocacy Manual.

Long-Term Response: On June 19, CRLA's Training/Technology Director Julie Hall met with a PSTI representative to address this problem. LegalServer has a field, "Original Date Opened", that preserves that date if a record is re-opened. PSTI is working to create a report that will "pull" that date and place it in a field on the case-profile page near the current "Date Open" field. In the meantime, Ms. Hall has added a "Disposition Log" to the case profile, viewable to all staff, which reports the case disposition which includes the original date opened, original date closed, date re-opened, etc. [Exhibit A, attached.] She notified all local office Directing Attorneys and Administrative Legal Secretaries (ALSs) of this new Disposition Log, and provided a training during an ensuing, periodic ALS Training Call.

- b.** *Ensure that protocols are developed so that management reviews and reconciles the paper and electronic intakes during its closing review;*

Finding No. 2 (page 20) noted that the Audit Team had discovered 3 different versions of CRLA paper intake form and 2 different version of the CRLA paper supplemental intake form being used among our 20 offices.

We first note that we have under consideration a transition to a paperless intake system (in which the profile page would be printed out for purposes of obtaining applicant signatures/attestations). While that process continues to evolve, we are addressing our current use of paper forms as follows:

Both the intake and supplemental intake forms have now been revised to include the version date at the bottom of each page and are presently being circulated for comments/edits as to other modifications. Upon approval, they will be loaded onto CRLA's program-wide Sharepoint and also distributed (with appropriate instructions) to our local offices. The master copies will be maintained at our Central office. Each staff desktop workstation will be set up with a "shortcut" linking back to the masters; staff will be trained to use the "shortcut" to automatically generate the current form for each use. Laptop users will have the master form added as an offline folder so that they can continue to use the proper version when not connected to CRLA's network.

Finding No. 2 (page 22) further notes the advisability of CRLA's paper intake form "mirror"-ing our ACMS ("LegalServer") screens. While, as noted above, CRLA hopes to move to a paperless intake system, we have been developing and reviewing several versions of a new paper intake form which ideally will accommodate an array of concerns in addition to the "mirror image", including:

1. obtaining non-LSC grantor-required applicant information;
2. consolidating applicant-completed portions of the intake into the fewest number of discrete areas or boxes to minimize applicant confusion;

3. consolidating particular types of applicant information such as financial eligibility;
4. accommodating LSC requirements for separate, dated signature lines for citizenship attestations and for staff verifications of screening;
5. promoting initial conflicts checking by staff before applicant provision of potentially confidential information;
6. consolidating portions for staff review and completion to minimize oversights; and,
7. accomplishing all the above on a single, 2-sided sheet.

Attached as Exhibit **B** is a version currently under CRLA review. While an ultimate, electronic version may ultimately differ in format, the above principles will also guide its development.

- c.** *Ensure that any changes made to the ACMS during the pendency of the case is concurrently made to the paper case files;*

Pursuant to a post-DR telephone clarification, CRLA understands that this portion of the C.A. is limited to, intake data relevant to the applicant/client's identification and eligibility determination.

CRLA has revised our Advocacy Manual [see ¶ 1.d., [following](#)] to include a specific step during case closing that ensures that the Directing Attorney reviews both the paper copy and electronic intake information for consistency. In the event of an inconsistency arising from updated or corrected information, the Directing Attorney will confirm that an explanation is included in the electronic record. The following represents the appropriately-revised, draft Advocacy Manual:

V.2 Ch 4D(2) Closing - D.A. Responsibility

The CRLA Directing Attorney (or delegate) must:

- Review the activity in the case to assure that CRLA:
 - (1) has complied with its professional responsibility in meeting the needs of the client's original and developed objectives, and,
 - (2) has advised the client of relevant deadlines for appeal or other action as may be appropriate. (LSC Performance Criteria, Performance Area Three, Criterion 1(b) and (c); ABA Standard 7.2 on Client Participation in the Conduct of Representation [{LINK}](#)¹)
- Review the electronic and hard-copy case file to assure that the contents

¹[{LINK}](#) references an electronic link in the online version to referenced materials.

are complete and that the activity report complies with the funding requirements:

- (1) The D.A. will confirm that the CRLA Case File and Trust Account checklists have been completed by the ALS ([LINK: CRLA Case File Checklist, Trust Account Checklist](#))
- (2) The D.A. will review the hard copy intake sheet to ensure that all information contained in the CMS electronic intake fields is consistent; that the electronic intake has been revised to accurately reflect intake information, or that any inconsistencies not reconcilable are explained in the Case Notes.

[PRACTICE NOTE: Example: if upon review of eligibility information, an error was discovered and appropriate correction was made in the electronic record, that fact should be noted in the related note field (i.e., "citizenship notes" in the citizenship status screen) or in a case note if a related note field is not available.

- Assure that all monies and original documents have been returned to the client;
- Approve the closing memo and deliver the file to the ALS or delegate for further closing procedures.

Additionally, CRLA's Administrative Director of Training, Technology & Other Support has sent an email to all D.A.s and Administrative Legal Secretaries advising them of the new policy.

- d.** *Provide training to its staff to ensure that all PAI cases are reported in accordance with the requirements and definitions of CSR Handbook (2008 Ed.), § 10.1, the LSC Act, regulation, and other applicable law, and that all files are re-opened in accordance with the CSR Handbook;*

CRLA is committed to providing proper documentary guidance (including online resources) and training to our staff to ensure case reporting in accord with the CSR Handbook and applicable law.

We discuss our steps with respect to PAI cases in our response to Corrective Action No. 6 (below, pages 10-21).

We discuss our steps with respect to re-opening files in our response to sub-part **a** of Corrective Action No. 1, above.

While trainings are essential, compliance is ultimately best ensured by accessible and easily-understood reference materials. Our long-existing, paper "Casehandling Manual" had become cumbersome to the point of being neither readily accessible nor easily updated. Prior to the Audit, a committee including

attorneys, staff and both litigation and administrative management had labored with a consultant to develop an on-line, searchable Advocacy Manual that should reflect not only updated policies and best practices but also direct electronic links to the Act, LSC Regulations, OAL External Opinions and other guidance. Due to a variety of factors including loss of key management and severe financial pressures, this effort had “stalled” at the time of the Audit. Many critical components, including timekeeping policies, case acceptance and case review systems, and policies clarifying LSC-restricted and -prohibited work were completed and uploaded to the on-line (Wiki) manual and have been used in staff training. Other sections, such as PAI and § 1612-compliance had also been revised but we subsequently determined did not accurately reflect CRLA procedures, and are currently being extensively re-drafted. While two DLATs have committed to significant time during the balance of 2012 to complete the (re-named) Advocacy Manual, management is also currently exploring a separate, part-time position dedicated to this effort. Our goal is to complete this task by November 30, 2012.

Corrective Action No. 2:

Ensure that the eligible alien status of telephone applicants and the date of the inquiry are documented, pursuant to Program letter 99-3 and 45 CFR § 1626.7;

With respect to our current, paper-based intake protocol, CRLA has prepared a revised standard Intake Questionnaire that includes multiple modifications and is currently under review. [Exhibit **B**, attached.] This revised version includes within the portion to be completed for recording eligible alien status for telephone intakes an additional, specific date line for status determination that is separate from the general intake date. Upon final approval, this revised Questionnaire will:

- be distributed as an email attachment to all offices with corresponding instructions for use;²
- be posted on the online Wiki version of CRLA’s Advocacy Manual;
- be accompanied by appropriate instructions for use - including the necessity of recording the screening date for telephone intakes - in CRLA’s Wiki-based Advocacy Manual;
- be supplemented by appropriate instructions for use - including the necessity of recording the screening date for telephone intakes - during Training/Technology Director Hall’s periodic ALS training calls

²This revised Intake Questionnaire includes a revision date to enable CRLA to clearly communicate to all offices the appropriate version that is in effect and to minimize the possibility that offices might use different versions.

Corrective Action No. 3:

Ensure it collects dated citizenship attestations and documents when alien eligibility is determined as required by 45 CSR Part 1626, and CSR Handbook (2008 Ed.), § 5.5.

Pursuant to a post-DR telephone clarification, CRLA understands that this C.A. was intended to require that CRLA ensure that we obtain dated citizenship attestations and provide dated staff verification that alien eligibility documents have been reviewed.

Since March 21, 2011, CRLA's standard Intake Questionnaire requires that the citizenship attestation be separately dated (in addition to the date in which the Questionnaire itself is completed). The newly revised Intake Questionnaire (described under ¶ No. 2, above) identically requires this. OCE's review of open cases included many earlier-opened cases that used an intake form which required only that the applicant's concluding signature line (pertaining to the entire Questionnaire and not specific to citizen attestation) be dated.

The March 21, 2011 version provided that staff verify their collection of information concerning alien eligibility but did not include a date for staff verification. The newly revised Intake Questionnaire now under review does require that staff verification be dated.

OCE also determined that some CRLA offices inadvertently continued to use outdated intake forms. Our incorporation of revision dates on the faces of new forms (including the revised Intake Questionnaire) should simplify instruction concerning the proper version(s) in effect, and minimize the probabilities of offices using superceded versions. Our response above to Corrective Action No. 2 describes how the revised Intake Questionnaire will be distributed and implemented into our daily operations.

Corrective Action No. 4:

Ensure that over-income applicants are screened in a manner consistent with board intent. In its comments to the DR, CRLA should clarify the board's direction on this matter and action taken to ensure consistent implementation;

The following revision has been drafted to amend existing Board Policy at page 6, Section III D 5 , subpart (c) (Income Authorized Exceptions 125% to 200% FPG)) and will be presented for provisional approval by the CRLA Board's Executive Committee on August 4, 2012, subject to final approval at the Board's October 21 meeting:

CRLA may also determine that the applicant is 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 45 CFR 1611.5(a)(4):

- current income prospects, taking into account seasonal variations in income;
- unreimbursed medical expenses and medical insurance premiums;
- fixed debts and obligations;
- expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
- non-medical expenses associated with age or disability; or
- current taxes.

If, because of one or more of these factors, an office determines that the applicant is lacking or struggling to meet the basic needs for healthy living—including having insufficient income to provide healthful food, shelter, clothing, and essential services-- the office may determine the applicant to be income-eligible.

In considering these factors, it is not required that an applicant's income be 'spent down' to at or below 125% of the Federal Poverty Guideline. Rather, these are the factors to be considered in determining an applicant financially eligible under this section. All of the factors can be considered, but the presence of one or more factors is sufficient to determine an applicant income-eligible.

Upon approval, the amendment will be incorporated into CRLA's Wiki-based Advocacy Manual, and additional training will be provided.

Finding No. 2 (DR, page 22) observed an inconsistent understanding among intake staff of the word "household". We conclude that the current definition is appropriate, and that we will address this concern through additional training and supervision.

Finding No. 3 (DR, page 24) observed a lack of uniform understanding among staff as to what constitutes "significant change" or what constitutes "near future" in effecting compliance with 45 CFR § 1611.7(a)(1). Accordingly, the following language is now under review as guidance for insertion into, and supplementing, CRLA's Advocacy Manual:

In screening applicants for eligibility based on income, ask all applicants if the applicant has any reason to believe that their income is likely to change significantly in the near future. [link to LSC OLA Advisory Opinion AO A)- 2009-1006, dated Sept 3, 2009.]

If the applicant's response is negative, unless something else about the information provided by the applicant gives you a reasonable basis to inquire further, the inquiry should end.

If the applicant's response is, "yes," further inquiry is appropriate. The purpose of the inquiry is to determine whether there are income prospects that are not otherwise obvious, are relevant to the applicant's ability to afford legal assistance, and should be considered in determining whether the applicant is financially eligible.

In determining financial eligibility, we use actual current annual income. If an applicant's income varies, or the applicant expects a change in income, we should consider these variations or changes in calculating current annual income. A 'significant' change is one that changes the applicant's financial status with regard to being over or under either 125% or 200% of the FPL.

Once approved, the amendment will be incorporated into CRLA's Wiki-based Advocacy Manual, and additional training will be provided.

Finding No. 3 (DR, pages 23, 25) notes that some files lack documentation of authorized exceptions for clients whose income falls between 125% and 200%. This oversight can and will be corrected through a modification to LegalServer to require completion of the appropriate field.

Corrective Action No. 5:

Make the following two (2) technical changes to its financial eligibility policy:

- a.** *Clarify the asset policy so that the three (3) benefits listed (TANF, General Relief and SSI) are clearly identified as the sole exceptions or, if there are other benefits which meet this requirement, they should be identified in the policy;*

The following revision has been drafted to amend existing Board Policy at page 5, Section III D 3 (Income Derived Solely from Governmental Program for Low Income Individuals and Households), and will be presented for provisional approval by the CRLA Board's Executive Committee on August 4, 2012, subject to final approval at the Board's October 21 meeting:

If an applicant's income is derived solely from Cal-Works, the applicant can be deemed eligible both with respect to income and assets without making an independent determination of income or assets. CRLA's Board has determined that Cal-Works is a governmental program for low income individuals and families that has income standards at or below 125% of the federal poverty level and an asset test.

Upon approval, the amendment will be incorporated into CRLA's Wiki-based Advocacy Manual, and additional training will be provided.

- b.** *The policy excludes from consideration assets that are exempt from attachment under state or Federal law, without specification; CRLA must specifically list in its policy those assets it intends to exempt from consideration;*

The following revision has been drafted to amend existing Board Policy at page 4, Section III C 2 (Excluded Assets), and will be presented for provisional approval by the CRLA Board's Executive Committee on August 4, 2012, subject to final approval at the Board's October 21 meeting:

The following assets are *excluded* from consideration as assets:

- household's principal residence;
- vehicles used for transportation;
[Some examples are vehicles used for going to work, to medical appointments, to school or training, or for grocery shopping.]
- assets used in producing income;
[Some examples are a farmer's tractor, a carpenter's tools or leased farmland.]
- Household furnishings, appliances, clothes, and other personal effects;
[CCP 704.020]
- Jewelry, heirlooms, and works of art not exceeding \$6,075; [CCP 704.040]
- Health aids and prosthetic or orthopedic appliances; [CCP 704.050]
- Unmatured life insurance policies, but not the loan value of such policies to the extent the loan value exceeds \$9,700; [CCP 704.100]
- Public and private retirement accounts; [CCP 704.110; 704.115]
- An award of damages or a settlement arising out of a personal injury to the extent necessary for support of the applicant and/or applicant's household; [CCP 704.140]
- An award of damages or a settlement arising out of the wrongful death of the applicant's spouse or a person on whom the applicant or applicant's spouse was dependent to the extent necessary for support of the applicant and/or applicant's household; [CCP 704.150]
- An award of workers' compensation; [CCP 704.160]
- Payment of relocation benefits for displacement from a dwelling paid pursuant to California or federal law; [CCP 704.180]
- An award of student financial aid; [CCP 704.190]
- A cemetery plot. [CCP 704.200]

Upon approval, the amendment will be incorporated into CRLA's Wiki-based Advocacy Manual, and additional training will be provided.

Corrective Action No. 6:

Conduct a review of its PAI program to ensure that cases are reported and time is recorded in accordance with the CSR Handbook (2008 Ed.), Chapter X and 45 CFR Part

1614. *The corrective action should include training of all staff involved in handling or coding PAI cases;*

Our response to this C.A. will be lengthy and, of necessity, require detailed discussion of a substantial number of the various Findings described in the DR. We summarize these discussions through the following points:

- We agree that CRLA has significantly under-reported PAI cases and PAI time; this has occurred for a variety of reasons that will be explained below;
- We agree that much of our PAI program has not received adequate oversight in the past; we have recently posted a position for a new part-time (25% FTE) PAI Developer who will have more rigorous and clearly-defined responsibilities;
- We often disagree with DR conclusions that we “over-reported” PAI time; at this point we are unclear whether our disagreements arise from CRLA’s possibly having inadequately communicated the factual details of the work in question or whether we are in disagreement concerning OCE’s interpretation of 45 CFR 1614.3;
- We also disagree with the DR conclusion that CRLA is inconsistent in reporting co-counseling cases as PAI or as staff cases; again, we are unclear at this point as to whether our disagreement arises from our possibly inadequately conveying CRLA joint-counseling policies (including co-counseling) and their application to specific co-counseled cases that the Audit Team examined, or whether the DR overlooks that several additional factors determine whether a co-counseled case may be counted as PAI.

a. Co-Counseled Cases and PAI

We start our response by referencing CRLA’s co-counseling and common-interest counsel policies which have been evolving over some time.³

Use of Terminology:

- *Co-counseling* exists when CRLA and a non-CRLA attorney both represent the same eligible client on the same matter, case or claim. A co-counseling relationship exists regardless of whether the non-CRLA attorney is a member of

³The material here is drawn from the June 8, 2011 draft of Chapter 9 (*Co-counseling and Common-Interest Counseling*) of CRLA’s draft Advocacy Manual which, although not yet fully trained upon, has been partially posted in CRLA’s internal Wiki site since 2010. Some of the material referenced here was first addressed in a “Policy” issued January 10, 2002; it was reiterated in part in a supplemental memo released August 27, 2007. Some of the co-counseling policies described herein have been incorporated in CRLA’s model co-counseling agreements that trace back to at least the 1970s.

the private bar, a law-school clinic attorney, a “public-interest” attorney or another LSC-program attorney.

- Co-counseling does not exist where CRLA and the non-CRLA attorney do not represent the same client on the same claim or defense.
- Co-counseling requires a written agreement between CRLA and the non-CRLA attorney
 - CRLA utilizes a form, model co-counseling agreement which, with senior management approval, may be modified to fit particular circumstances.
- Co-counseling is not congruent or synonymous with PAI, but may entitle CRLA to claim our participation in co-counseled advocacy as PAI. Generally, co-counseling qualifies as PAI if both the following conditions exist:
 - co-counsel is NOT employed by an LSC-funded program;
 - co-counsel does NOT seek fees from the client’s recovery (e.g., no contingency fees).
- *Common-interest counseling* describes the situation that exists when two or more attorneys are representing their own respectively separate clients who are parallel parties in the same litigation and have similar or “common” interests in the proceeding.
 - In common-interest counseling, CRLA and the non-CRLA attorney do not represent the same client; however, situations frequently exist where the non-CRLA attorney simultaneously represents both a non-CRLA client (common-interest counseling) and a CRLA client (co-counseling).
 - CRLA’s client and the non-CRLA client (and their respective counsel) may enter a common-interest agreement for the purpose of insulating communications from assertion by opposing counsel that these communications resulted in waiver of the attorney-client privilege or work-product protection.

As noted above, not all *co-counseled* cases qualify as PAI cases. A case co-counseled with another LSC-funded lawyer does not qualify and is not reported as a PAI case. Far more prevalent in CRLA’s practice are co-counseled cases where non-CRLA counsel execute retainers with our clients that provide for counsels’ fees out of the respective clients’ recoveries. This situation has long been addressed in CRLA’s form model co-counseling agreements which provide, inter alia, that co-counsel may execute their own retainers with CRLA clients without limitation on the terms of those retainers but simultaneously require co-counsel to advise CRLA when such retainers provide for

recovery of attorneys' fees from CRLA clients.⁴

Prior to filing affirmative co-counseled litigation, CRLA staff must submit to CRLA's collective Directors of Litigation, Advocacy and Training a Litigation Assessment Plan (LAP) which advises whether the proposed case will be co-counseled and, if so, staff are expected to have discussed the proposed co-counsel arrangements with prospective outside counsel.⁵ The submitted LAP advises whether the proposed case will qualify as PAI.

Finding 17 (DR, pages 45-46) observes that CRLA offices are not consistent in reporting co-counseled cases as PAI, but did not identify any specific files.⁶ While we do not assert that we are incapable of occasional, inadvertent error in coding our closed co-counseled cases, we believe that OCE's perception here of "inconsistency" is the result of our having inadequately advised the Audit Team that multiple other factors determine whether a co-counseled case will be carried and closed as a PAI case, and that the apparent "inconsistency" in coding indeed represents generally consistent compliance with multiple policies.

Finding 17 (DR, page 45) further concludes that staff are reporting as PAI cases, cases in which non-CRLA attorneys are representing different (non-CRLA) "clients" who are not LSC-eligible - but the DR does not specifically identify any case. We observe first that in the event non-CRLA counsel in a case is representing solely non-CRLA clients (regardless of LSC-eligibility), CRLA is not engaging in co-counseling with that attorney and accordingly does not enter a co-counseling agreement with the non-CRLA attorney. (See discussion, above, at page 12.) However, if the non-CRLA attorney is

⁴Paragraph 2.b. of CRLA's standard model co-counseling agreement provides, " ___[Law firm]___ may execute retainers with . . . CRLA's clients and/or other clients interested in the litigation This Agreement in no way addresses ___[law firm's]___ retainers except that ___[law firm]___ will immediately advise CRLA whether any executed retainers provide for recovery of attorneys' fees from any clients whom CRLA also represents, so that CRLA may comply with Legal Services Corporation (hereafter, "LSC") obligations concerning the proper reporting of co-counseled cases under 45 C.F.R., Part 1614."

⁵The DR occasionally appears to conclude that CRLA affirmative litigation is reviewed and approved by a single DLAT corresponding to the particular office originating the LAP. Although a single DLAT has authority to approve emergency litigation - typically involving ex parte restraining orders - CRLA's Litigation Assessment Plans are reviewed collectively by all four DLATs and approval is traditionally by consensus.

⁶Finding 17 is incorporated into the DR's Recommendation No. 7 (page 68) that CRLA review case-closing practices to develop consistent methodology for determining whether to close co-counseling cases as staff or as PAI cases.

simultaneously representing both non-CRLA clients and CRLA clients, CRLA does enter a co-counseling agreement with respect to (only) the jointly-represented clients; i.e., CRLA will not be in a co-counseling relationship with respect to the non-CRLA attorney's solely-represented clients.⁷ Although our comprehensive PAI policy is being re-drafted in the pending Wiki-based Advocacy Manual, our existent long-standing policy provides that staff time and expenditures may be claimed as PAI only when non-CRLA attorneys are representing CRLA-eligible clients (and is not seeking fees from those clients' recoveries).⁸

Again, we do not claim infallibility in our reporting, but we do believe we have had adequate formal policies and we are not currently aware of specific instances of non-compliance where staff has reported a case as PAI based upon participation in the case of another non-CRLA attorney representing solely non-LSC-eligible clients. In all events, we believe we are further improving and clarifying all PAI policies in our new online Advocacy Manual, and we are in the process of filling a newly-defined PAI Developer position who will have more rigorous responsibilities for PAI policies, training and staff oversight.

b. Co-Counseled (and Other Common-Interest-Counseled Cases) and CRLA Support/Expenditures

Finding 17 (DR, pages 44-45) concludes that CRLA advances 100% of litigation costs when private counsel represent non-LSC-eligible clients, and identifies specific cases which lead to this observation. The DR further questions whether this practice would raise § 1626 concerns.

We respond here, first, by summarizing existing CRLA policies on shared time, work and resources in co-counseled and other common or parallel counsel situations, and second by reviewing each of the Audit Team's referenced files. As we will show below, we believe that each of the "flagged" cases was handled consistently with both CRLA and LSC policies including, but not limited to, 45 CFR Part 1626.

(1) CRLA Policies on CRLA's Shared Time, Work and Resources in "Co-

⁷Our standard model co-counseling agreement acknowledges that the non-CRLA attorney may enter retainers with additional plaintiffs in the litigation.

⁸E.g., CRLA Memo to All Legal Staff from Bill Hoerger, dated 8/14/07, "PAI POLICIES [partial]", p. 2.

Counsel” Arrangements and “Common Counsel” Situations:⁹

- Where all parties have common claims and all parties are co-counseled, CRLA and co-counsel may agree as to professionally-appropriate sharing of time and resources which may reflect particular circumstances and goals of the arrangement including whether co-counsel anticipates applying for and/or obtaining fees for her/his participation in the case.
- CRLA generally *advances* costs and expenses of co-counseled litigation but proportionate recovery of actual costs/expenses is addressed in the co-counseling agreement.
- Where a co-counseled party has a claim for which representation is provided only by the (non-CRLA) co-counsel, CRLA staff should not undertake the investigation, discovery or case preparation that is exclusively for prosecution of claim in which the client is solely represented by non-CRLA counsel and which does not affect the claims in which CRLA provides representation.
- Where all parties have common claims but only some parties are co-counseled professionally-appropriate sharing of time and resources in preparing litigation is anticipated; however, CRLA ethically must assure that we vigorously advocate all claims and issues on behalf of our clients irrespective of any indirect benefit accruing to other non-CRLA-represented parties, and notwithstanding any unexpected deficiencies or limitations in co-counsel’s contributions.
- Where parties have common claims in the same lawsuit but are not co-counseled, CRLA and the non-CRLA attorney may agree as to professionally-appropriate sharing of time and resources in investigation/preparation of common claims but the CRLA attorney should ensure that CRLA clients are obtaining “professionally-equivalent” resources from the non-CRLA attorney.

⁹The material here is also drawn from the June 8, 2011 draft of Chapter 9 (*Co-counseling and Common-Interest Counseling*) of CRLA’s draft Advocacy Manual which, although not yet fully trained upon, has been partially posted in CRLA’s internal Wiki site since 2010. Some of the material referenced here was first addressed in a “Policy” issued January 10, 2002; it was reiterated in part in a supplemental memo released August 27, 2007. Some of the cost policies described herein have been incorporated in CRLA’s model co-counseling agreements that trace back to at least the 1970s.

- Where parties represented only by non-CRLA counsel have different claims/defenses from CRLA's clients, CRLA staff should not undertake the investigation, discovery or case preparation for claims/defenses asserted exclusively on behalf of the non-CRLA party and that do not affect the CRLA-represented party.

Compliance with these principles means that in cases where CRLA clients and other parties represented solely by non-CRLA attorneys have common interests, claims and/or defenses, CRLA may expend resources in the nature of professional time and/or expenditures which may inure to the benefit of the non-CRLA clients (LSC-eligible or not) where doing so is required by our professional responsibilities to our own clients and where work or expenses are shared between CRLA and non-CRLA counsel in arrangements that are commonly considered professionally-appropriate. E.g.: CRLA counsel may draft on behalf of all plaintiffs the interrogatories addressed to defendant A while non-CRLA counsel may draft on behalf of all plaintiffs the interrogatories addressed to defendant B; CRLA counsel may undertake the depositions of certain witnesses or parties while non-CRLA counsel undertake the depositions of other witnesses or parties; CRLA may undertake the investigation or draft the discovery pertinent to certain common claims while non-CRLA counsel provide equivalent efforts pertinent to other claims. However, we re-iterate that CRLA does not provide resources to non-CRLA parties' claims or defenses that are not shared or common to CRLA's clients.

(2) CRLA files identified in the DR (page 45, fn. 85) as raising § 1626 concerns:

- *[O]pen Case No. 10-0274128 (PAI case in which non-LSC eligible litigants along with eligible LSC PAI client was represented by the PAI co-counsel. CRLA advanced 100% of fees for litigation)*

All plaintiffs - those represented by CRLA and those represented exclusively by the non-CRLA attorney - received fee waivers; consequently CRLA advanced no fees of any sort for this case. CRLA represents 9 of the 16 plaintiffs in this litigation originally filed in April, 2010. Co-counsel, a sole practitioner, also represents CRLA's clients and additionally represents the remaining 7 (non-CRLA-represented) plaintiffs. CRLA's clients are plaintiffs in 20 causes of action (including both housing-related and employment-related causes) of the total 25 causes in the current complaint. CRLA staff and co-counsel have allocated litigation responsibilities among themselves, e.g., in preparation of plaintiffs' interrogatories to defendants, those pertaining to housing issues were drafted by CRLA staff while those pertaining to employment issues were drafted by co-counsel. Plaintiffs' motions to compel defendants' responses on both housing and

employment claims, plaintiffs' requests for admissions, and plaintiffs applications to have requests deemed admitted have been largely (probably 90%) undertaken by co-counsel. While CRLA has not accessed co-counsel's internal records, our best evaluation by our (very experienced) lead attorney is that CRLA and co-counsel have invested virtually equal hours overall in the preparation of this case.

- *Case No. 027-2248 [sic., 10-027-2248] (wage discrimination case, accepted pursuant to fee generating exceptions, requesting punitive damages. CRLA advanced 100% of fees for litigation)*

CRLA and co-counsel, a sole practitioner, initially jointly represented the two plaintiffs with identical claims in this case, both of whom had initially been determined to be LSC-eligible. CRLA advanced litigation costs initially in accord with our standard co-counseling protocol. Only following the investment of most costs did CRLA learn that one plaintiff was not LSC-eligible and thereupon withdrew from representation. CRLA thereafter advanced no fees or costs on behalf of our former client. The case was subsequently settled pursuant to which CRLA recovered all our costs.

- *Case No. 03-49001177, closed in 2009 (PAI housing elements [sic.] case in which CRLA co-counseled with non-profit public interest law firm, California Legal Housing [sic., California Affordable Housing Law Project] CRLA advanced 100% of fees for litigation)*

CRLA co-counseled with the California Affordable Housing Law Project ("CALHP") in representing 3 plaintiffs - all of whom were LSC-eligible and CRLA clients - before state court (and briefly U.S. District Court during defendants' attempt to remove). This case incurred limited costs as all plaintiffs qualified for fee waivers and there was limited travel, etc., and no formal discovery was undertaken. CAHLP undertook the bulk of legal research and writing. CRLA and CAHLP covered counsels' respective own costs, and any other costs. We re-iterate, none of the plaintiff-parties were LSC-ineligible.

- *[O]pen Case No. 98-340008621 which was not able to be reviewed because it was missing. In this case, CRLA reports that it co-counseled with the Center for Race, Poverty and Environment to obtain relief for indigenous farm workers who were housed on a superfund toxic site. The settlement resulted in the construction of a new housing complex for the workers.*

This case did not entail litigation or other formal proceedings that incurred fees or proceedings costs. CRLA and the Center for Race, Poverty and Environment (CRPE) each underwrote their own out-of-pocket costs..

- *[O]pen Case No. 10-0283324, a PAI case in which co-counsel was a non-profit public interest group, Earth Justice, which represented non-LSC eligible litigants along with eligible LSC PAI client in the co-counseled case. In this case, Earth Justice advanced 100% of the fees for litigation.*

CRLA represented two individual plaintiffs and co-counseled with EarthJustice as to these two. EarthJustice also solely represented 6 organizational plaintiffs. CRLA attorneys spent about 250 hours on this case while we understand that EarthJustice attorneys spent over 800 hours.

c. CRLA’s Watsonville/Santa Cruz Participation in the Central Coast Foreclosure Collaborative Is Appropriately Reported As PAI Time

Finding No. 17 (DR, page 49) concludes that our Watsonville/Santa Cruz staff may not report their participation in the Central Coast Foreclosure Collaborative (involving attorneys and other non-profit advocacy groups) as PAI. The DR reasons that *“the private attorneys are participating in the Central Coast’s foreclosure Collaborative PAI [sic.] program not CRLA’s PAI program . . . [T]he support [by private attorneys] was provided to the Central Coast Foreclosure Collaborative Program, not CRLA.”* (Id., p. 49.)

We believe the Audit Team unfortunately mis-understood the nature of the Central Coast Foreclosure Collaborative (“CCFC”) and, consequently, mis-applies 45 CFR § 1614.

CCFC is not an entity (much less an entity with a PAI program). It is rather the name for an informal group of CRLA, other local non-profit entities including non-attorney housing counselors and the Watsonville Law Center (“WLC” - a privately-funded legal services program), private attorneys, the District Attorneys’ Offices of Monterey and Santa Cruz Counties, the Superior Court’s Self-Help Center, a local credit union, the offices of some local legislators - - who meet regularly to attempt to find solutions to the foreclosure crisis. None of the other participants in CCFC is LSC-funded.

The “Help For Homebuyers” law days or workshops are jointly sponsored by CRLA and the Watsonville Law Center [Exhibit C]: CRLA shares responsibility for the substantive content of these workshops while WLC assumes responsibility for acquiring the sites and translators, and copying the materials. CRLA refers certain categories of our applicants/clients to the workshops.

CRLA’s sponsorship and involvement in CCFC is an integral, planned part of the outreach and community-education component of Watsonville/Santa Cruz offices’ advocacy workplans. These activities represent CRLA planned initiative and service

undertaken thereunder. We do not understand that bringing other advocates and resources into a CRLA collaborative strategy converts our outreach and education activities into a non-CRLA "entity" to which the cooperation of the private bar is ascribed with the consequence of characterizing our activities as supportive of that other (non-existent) entity.

Accordingly, we conclude that CRLA's staff time and other resources expended in the CCFC effort are appropriately reported as PAI, consistent with 45 CFR § 1614.3(b)(2).¹⁰

d. CRLA Offices' Practice(s) of Closing (non-co-counseled) Cases Involving Private Attorneys Without Evaluating Who Did the Majority of Work

Finding 17 (DR, pages 46-47) describes a number of CRLA offices as closing cases in which private counsel were involved in various capacities as either "staff time" or "P.A.I." without evaluating who did the "majority" of the work. The DR concludes that this practice violates the CSR Handbook. (*Id.* (2008 ed.), ¶ 10.1(b)(iv), p. 29.) We do not so read the CSR Handbook and are puzzled by this conclusion.

The provision cited in the DR provides,

In cases in which both program staff and a private attorney provide legal assistance, but have not co-counseled the case, the program should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of legal assistance. . . .

(Handbook, *supra*, § 10.1(b)(iv), p. 29 (hereafter "(b)(iv)".) The DR elsewhere uses the phrase, "highest level of service" to reference the CSR closing codes rather than the comparative quantity of work (*id.*, pp. 32-34); this is consistent with other LSC communications over the years. While frequently, these might be the same, there can be cases where this is not true, i.e., 75% of the case time went into CRLA staff investigation (closing code "B") and 25% of the case time went into volunteer attorney's settlement of case without litigation (closing code "F"). Indeed, that's virtually the example explicitly illustrated in (b)(iv) - which does not resolve coding by looking at the "majority of the work". As we read (b)(iv), non-co-counseled cases involving participation by private attorneys can be reported as P.A.I. only if private counsel "provided the highest level of legal assistance."

We acknowledge that under this application, we have in several offices (including

¹⁰We also observe that participation by the private bar in these activities would also appear to qualify as PAI under 45 CFR 1614.3(b)(1). The DR, however, appears to be concerned only with CRLA staff time and resources.

Watsonville¹¹ and San Luis Obispo) under-reported (for PAI purposes) cases handled by on-site volunteer private attorneys where the private attorney has indeed provided the service equating with the CSR closing code. This deficiency will be addressed through the revised P.A.I. Chapter in our Wiki-based Advocacy Manual and through more rigorous trainings and oversight by our new PAI Developer.

Corrective Action No. 7:

Ensure that PAI case files clearly document the level of service provided to clients to support the closing code assigned and provide staff with training regarding these policies.

As the DR identifies, this deficiency can be addressed (in non-PAI as well as in PAI case files) through continuing staff trainings and oversight by the new P.A.I. Developer. Of equal importance will be clarifying in the revised Advocacy Manual chapter on P.A.I. the requirement for adequately documenting level of service oversight.

Corrective Action No. 8:

Have the PAI Coordinator report all of his time related to the PAI effort as required by 45 CFR § 1614.3(l)(l), and a percentage of the Executive Director's salary should be allocated to PAI as indirect involvement on PAI related activities;

With respect to the PAI Developer please see our response to Corrective Action No. 6 (above, page 11).

With respect to the Executive Director's salary, CRLA's Controller is implementing the procedures to allocate an appropriate percentage of the Executive Director's salary to PAI as indirect involvement.

Corrective Action No. 9:

Provide an explanation as to whether legal advice or legal assistance is provided during these clinics, if and when eligibility information is gathered and when an eligibility determination is rendered;

a. Santa Barbara/Oxnard Employment and Labor Law Clinics:

¹¹We note that the Watsonville office's regular volunteer attorney practices with CRLA under the State Bar's "emeritus" status; we assume this status is equivalent to "private attorney" within the meaning of the Act.

Findings Nos. 2 (DR, p. 15) and **17** (DR, pp. 50-51) request that CRLA provide this explanation with respect to our Santa Barbara/Oxnard Employment and Labor Law clinics at Casa de la Raza. The DR concluded that, “[c]ontradictory information was received during interviews as to whether legal advice or legal information is provided.”¹²

CRLA has reviewed with our Santa Barbara/Oxnard staff the information contained in Findings Nos. 2 and 17 concerning Employment and Labor Law Clinic. CRLA respectfully concludes and urges that the apparent “contradictory information” described in the Draft Report with respect to provision of legal advice or legal information is the result of misunderstanding during the staff interviews with the onsite OCE team.

We believe the misunderstanding arises from the circumstance that CRLA conducted two, distinct types of activities at *Casa de la Raza*, a non-CRLA family resource center.

- (1) The former Santa Barbara Basic Program office (now relocated to a different, part-time site) conducted and continues to conduct scheduled, weekly “satellite” intake (Thursdays 10:00 am - 1:00 pm) at *Casa de la Raza*. This intake is performed by CRLA’s part-time Community Worker, Blanca Avila and is virtually identical to applicant intake in other CRLA offices. Applicants must complete CRLA’s standard intake form including provision of eligibility information as well as a description of the problem for which they seek CRLA services.¹³ Ms. Avila contemporaneously reviews eligibility information as well as the nature of the problem with Staff Attorney Kirk Ah Tye by telephone who is located in the Oxnard Basic Office. Where the applicant’s intake information demonstrates eligibility and, further dependent upon the timing requirements inherent in the applicant-client’s problem, individualized advice, i.e., legal assistance will be provided by Ms. Avila under the supervision of Mr. Ah-Tye. We emphasize this legal advice is provided onsite at *Casa* only following determination of the applicant’s eligibility. If the applicant cannot demonstrate eligibility, she or he will appropriately be referred to other resources in accord with CRLA’s standard intake-and-referral process.

We conclude, and urge OCE to likewise conclude, that CRLA’s satellite intake conducted at *Casa de la Raza* fully conforms with 45 CFR § 1626.

¹²The DR further observed that, “[i]f legal information is provided, no staff time to support the clinic can be allocated toward CRLA’s PAI requirement” thus disqualifying the Indigenous Farmworker Program Director’s allocation of PAI time to clinic travel and support activities.”

¹³Casa staff provide individuals seeking services on other days with appointments during CRLA’s Thursday presence.

- (2) At the time of the audit, CRLA also co-sponsored with *Casa de la Raza*, at the latter's site (and supports through staff involvement) monthly (every third Thursday) Employment and Labor Law Clinics. [Exhibits **D, E** (fliers)]. (These Clinics were suspended in December of 2011 as a result of CRLA personnel commitments.)
- (A) The DR questions whether legal advice/assistance is provided to non-qualified attendees by private attorneys in conflict with the provisions of 45 CFR § 1626.

As the DR describes, the clinical presentations begin with a Power-Point presentation given by CRLA's Community Worker followed by general questions and answers conducted in the presence of the entire attending audience. An attending private attorney or CRLA's Indigenous Farmworker Program Director (based in Oxnard) would further respond to audience questions providing general legal information to the entire audience. As the DR further notes, interested attendees completed written intake forms and were then briefly interviewed by the participating attorneys in order to provide enhanced issue-spotting. No legal advice was provided at the *Casa de la Raza* Labor Law Clinics. Immediately following the Clinics the intakes were gathered and then taken to the CRLA Santa Barbara office where they would be entered in the ACMS, and reviewed at case review meetings. CRLA staff did not provide individualized legal advice or assistance at the clinics but do so only subsequent to eligibility determination and referral of the applicant to the CRLA office.

CRLA's observation and knowledge of private attorney participation in these clinics informs us that the private attorneys similarly did not provide individualized legal advice/assistance during the clinic presentations.

However, should our observations have erred, and private counsel on occasion did provide legal assistance to non-qualified attendees, we note the following considerations: (1) the assistance is provided at a non-CRLA site and did not implicate CRLA resources; and, (2) the clinics are not sponsored solely by CRLA but are co-sponsored with a non-LSC-funded organization that underwrote the site resource. Consequently, in the event that this activity had occurred, we would question whether the time spent by a private attorney on a non-CRLA site, and not otherwise using CRLA resources, would amount to an activity implicating CRLA's

resources and subject to § 1626.¹⁴

- (B) The DR's conclusion that if only legal information is provided at the Clinics, CRLA staff cannot allocate our support time to PAI (D.R., id., p. 50) appears inconsistent with 45 C.F.R., § 1614.3, subd.(b)(1). The latter specifically provides "community education" as an example of a PAI activity undertaken by a recipient with support provided by a private attorney. (Id.) Community education has, to the best of our understanding, always been considered a "matter" (cf., (LSC) "Matters Service Reports Frequently Asked Questions", General Question # 4, pp. 1-2; LSC: MATTERS SERVICE REPORT: Definition of Key Terms, p. 1) and consists of non-individualized legal information. The Draft Report acknowledges that legal information may be provided at clinical presentations.

We understand the intent of the DR is to emphasize that PAI time may only be reported with respect to eligible clients; we do not understand the Act or the regulations to mandate that a recipient provide only legal assistance to eligible clients. Thus, we believe that the conclusion on page 50 is an inadvertent mis-statement of the regulation.¹⁵

b. Marysville SSD, Workers Compensation and Family Law Clinics38, 40, 41]

The DR at various points¹⁶ observes that CRLA's Marysville office sponsors periodic, on site "clinics" on Social Security Disability, Workers Compensation and Family Law which are conducted by local members of the private bar and are open to the public without eligibility determination. OCE has requested that, in this reply, CRLA address professional responsibility issues raised by local staff in response to OCE concerns about services provided through these clinics. We do so, below.

¹⁴If private attorney activity vis a vis non-qualified applicants were found to have existed and to implicate CRLA resources above a de minimus level in this setting, we then believe that the provisions of 42 U.S.C., § 2996e(B)(3)(b) become of concern as discussed in sub-part **b.** of this response concerning the Marysville clinics. (Page 26, below.)

¹⁵We also read Section 10.1(b)(iv) of the CSR Handbook as applying only to "cases" and thus inapplicable in clinical settings where community education/legal information is being provided to eligible clients with support provided by private attorneys,

¹⁶**Findings Nos. 2** (DR, page 16), **5** (DR, page 29), **9** (DR, pages 31-32) and **17** (DR, pages 48-49).

(1) **Background:**

The Marysville clinics nominally are sponsored solely by CRLA, and each of the three occurs twice monthly. CRLA has successfully recruited individual, local attorneys to provide services at the clinics. A considerable motivation for these attorneys - in addition to fulfilling pro bono aspirations - is the opportunity to develop cases that are ultimately fee-generating and clients with whom they will enter subsequent engagements and continue to serve from their own offices. That said, local private attorneys are not inclined to personally “sponsor” or “host” functions or gatherings of groups of low-income individuals at their private offices. Thus, the participating members of the private bar perceive the CRLA-sponsored and CRLA-sited clinics as an attractive combination for pro bono contributions and for “recruiting and screening” fee-generating clients.

Applicants who approach CRLA for services in these three areas are referred to the appropriate clinical event at the Marysville office, and notified that clinics are staffed by private attorneys volunteering their time. The appropriate participating member(s) of the private bar attend the event and hold private consultations with the attendees in a vacant office; these consultations are not preceded by a “legal-information” or “education” presentation.¹⁷ CRLA does not dispute that these confidential conversations in many cases amount to analyses that are specific to the attendees’ unique circumstances, and fall within the CSR definition of “legal assistance.” In some instances, these conversations lead to engagements between the private attorney(s) and the attendee(s). While immigration status may in some instances affect the outcome of an individual’s legal concern, typically, local attorneys are not concerned with status in terms of providing individualized assistance or entering subsequent engagements.

CRLA asks attendees who participate in confidential conversations with the private attorney to complete our standard intake questionnaire; due to the fact that CRLA’s attorneys are performing other duties and/or may not even be on site during the conducting of the clinics, the intakes are not reviewed and the attendees are not qualified until some time following the clinical presentation. Attendees who received private advice which is documented in the file, and are qualified, are then reported as CSR “cases”. Non-qualified attendees who may have received private advice are simply counted within the “matter” report covering the clinical activity.

Our lengthy experience in Marysville¹⁸ leads to the following observations: (1) there are

¹⁷This format accords with the desires of the participating private attorneys. In contrast, CRLA’s own “in-house” clinics in other topics, conducted by our staff, do include prefatory presentations of generalized legal information or education.

¹⁸We opened our Marysville office in 1966.

undoubtedly in met needs for both legal information/education and legal assistance with respect to Social Security Disability, Workers Compensation and Family Law that CRLA does not have the budgetary and staff resources to meet, given our focus on still-higher priorities;¹⁹ (2) unfortunately, to date we have found no other potential sponsors or hosts in the community for legal information/education on these issues; (3) to preclude the participating private attorneys from engaging in consultation and limit them to solely “lecturing” at periodic presentations likely will threaten continued provision of the clinics; and (4) quite often the attendees who ultimately have significant legal issues for which engagement with a private attorney is ultimately appropriate and feasible will not have an understanding of either the nature or consequences of their concern or of the availability of attorneys until they attend the CRLA-sponsored clinics - - indeed, many will have never had prior contact with an attorney. Our perspective is that these CRLA-sponsored clinics effectively implement Performance Areas One and Two of LSC’s Performance Criteria.

During the onsite audit, OCE and Marysville discussed concerns about 45 CFR § 1626²⁰ and CSR Handbook § 2.3 fn. 11. CRLA staff expressed professional-responsibility concerns about precluding and/or intervening with private attorneys conducting the clinics who identify an individual and/or legal question that they evaluate as appropriate meriting a particularized response (and possibly additional, particularized further inquiry).

(2) CRLA Response(s):

(a) CRLA management has directed our Marysville staff to aggressively solicit the local bar associations to assume sole sponsorship of the Social Security Disability, Workers Compensation and Family Law Clinics. This process, perhaps not surprisingly, will necessitate “negotiation” and advocacy on our part, and will consume time.²¹ At this point, we have not identified any other

¹⁹Seventy-two percent of California’s low-income people do not receive the legal help they need to resolve basic problems. (California Commission on Access to Justice, *The Path to Equal Justice: A Five-Year Status Report on Access to Justice in California* (Summary Edition, Dec. 2002) p. 2.)

²⁰We understand the § 1626 question focuses on use of CRLA’s site by the private bar to provide services amounting to “legal assistance” to non-qualified individuals. No question arises that CRLA has reported ineligible applicants as CSR cases.

²¹The California Commission on Access to Justice recently emphasized the need in rural communities for collaborative efforts including co-sponsorships and participation from local sectors including representatives from legal services, local bar associations, educational institutions, community-based organizations and the local business and labor community.

cost-free, available sites;

(b) Although in theory, CRLA might post a staff “monitor” at the clinical presentations to attempt to draw the line between attendee questions/inquiries that need only a generalized or informational response and those that call for individualized or particularized answers that may amount to “legal assistance” within the meaning of the Act, there are potentially three obstacles to this idea:

(i) First, we don’t have an attorney present or available during the clinics - - indeed, the underlying motive for the clinics is to extend services beyond our limited lawyer-resources;

(ii) We doubt whether participating private attorneys would even tolerate such intervention; and

(iii) As we describe below, we have considerable doubts whether we can impose such intervention within California professional-responsibility standards. Before discussing our reasoning, we first turn briefly to § 1626 considerations:

(c) From the § 1626 perspective, we are looking at a circumstance in which twice monthly for each of the three clinics, private attorneys may step into a then-vacant space in CRLA’s substantial suite and engage in an individualized consultation with an individual who has not been LSC-qualified. No CRLA staff time is involved (except as to later review of the intake form to determine if the individual was qualified). No out-of-pocket CRLA expense was implicated. From the standpoint of allocating CRLA overhead to this potential momentary use of unoccupied CRLA space, we are undoubtedly looking at fractions of a percentage point. We cannot help but observe that this activity truly appears de minimus within either a practical, lay understanding of the term or within the OBM definition for federal audit purposes.

(d) **The Tensions Between LSC-Permissible “Legal Assistance” With California Professional Responsibility**

There is a significant conceptual difference between how OCE evaluates

(Improving Civil Justice in Rural California: A Report of the California Commission on Access to Justice (Sept. 2010) p. 44.) At the same time, the Commission recognized the limited number of attorneys in rural areas who provide pro bono services, as well as the comparative lack of law schools or large firms. (*Id.*, pp. 9, 45.)

“permissible” legal assistance and how California law evaluates “required” legal assistance.

(i) OCE’s approach to permissible legal assistance is “binary” and discrete

OCE’s audit/enforcement approach to the issue of prohibited activity is fundamentally “binary”, presenting two discrete questions that do not differ from case to case:

- **what** is legal assistance? [*Answer: a service specific to the client’s unique circumstances that involves a “legal” analysis tailored to the client’s factual situation*]; and,
- **when** may “legal assistance” be provided? [*Answer: only to a person who has been qualified, i.e., who has been screened and determined to be LSC-eligible - - it cannot be provided to any others*].

This rule has advantages of simplicity, clarity, and - perhaps most important for ensuring compliance - it’s perceived as providing predictability.²² However, it may not be consistent with an attorney’s (or law office’s) obligations under California professional-responsibility law which takes a less discrete approach to evaluating when an attorney may (or should) provide legal assistance.

(ii) California’s Definition of Professional Responsibility Is Case Specific, Based Upon Reasonable Knowledge and Common Practices of the Profession

The California State Bar Act (Bus. & Profs Code, §§ 6000 et seq.) limits addressing the duties of an attorney to Section 6068. Subsections (c) through (h) pretty well encompass the standards of responsibility to responding to those who seek some service from a California attorney. None provide practical guidance concerning information that an attorney

²²OCE has acknowledged that “[t]he discussion of what constitutes the provision of ‘legal information’ and what is ‘legal advice’ is a very current and active issue in the United States legal community, and . . . that sometimes the distinctions between services that amount to legal advice and those that do not are not precisely clear.” (FINAL REPORT//Inland Counties, supra, p. 27.)

should provide an individual who seeks some service.²³

California's formal Rules of Professional Conduct are remarkably limited in terms of addressing or establishing an acceptable level of practice for the state's attorneys. Within Chapter 3, entitled "Professional Relationship With Clients",²⁴ Rule 3-110 ("Failing to Act Competently") provides in relevant part:

- (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.

(California Rules of Professional Conduct, Rule 3-110.) Thus, the formal Rules do not even address (much less prohibit) occasional, negligent failures to perform with competence.

Rule 3-110 does not facially clarify whether its prohibition applies to a lawyer only with respect to actual clients (those with whom a formal engagement has occurred) or applies to a broader array of the lawyers' activities with respect to other persons, e.g., those who may attempt to consult even if no formal engagement is subsequently entered.

Chapter 5, entitled "Advocacy and Representation" contains no provision addressing adequacy of, or minimum standards for, the provision of services.

²³"(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just . . . ; (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with the truth . . . ; (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client . . . ; (e)(2) . . . ; (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charge. (g) Not to encourage either the commencement or the continuance of an action proceeding from any corrupt motive of passion or interest. (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed."

²⁴Rule 3-100 is part of Chapter 3 which is entitled "Professional Relationship With Clients".

All of the above ultimately suggest that any affirmative definition of professional responsibility in California is largely left to the decisional law defining professional malpractice in the tort context. The elements of a cause of action for professional malpractice (i.e., the duty that a professional owes someone) in California are well established. They are:

- (1) the duty of the professional to use such skill, prudence, and diligence as other members of his [or her] profession commonly possess and exercise;
- (2) a breach of that duty;
- (3) a proximate causal connection between the negligent conduct and the resulting injury;
- (4) actual loss or damage resulting from the professional's negligence.

(*Budd v. Nixen* (1971) 6 Cal.3d 195, 200.)

. . . . Thus, the duty owed by a professional is not a duty to perform any particular action (**for instance, a lawyer advising a client of the applicable statute of limitations**), but is simply a duty "to use such skill, prudence and diligence as other members of his [or her] profession commonly possess and exercise" **Whether that standard of care obligates a professional to advise a client of a statute of limitations, or to perform any other specific action, is a factual question that will vary from case to case.**

(*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 293 (Kennard, J., dissenting, citing, *Budd*, *supra*, and also, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 998) boldface added.)

(iii) **Section 2996e(b)(3) May Preclude Asserting That the Act and Regulations Pre-empt California Professional-Responsibility Law**

There is no question that, under the Supremacy Clause, (valid) federal law pre-empts California law (including decisional law) vis a vis professional duty with respect to LSC-funded attorneys. Arguably, federal law might provide a defense to a state tort action accusing the legal-services attorney of having failed to provide information/assistance that s/he had a professional duty to provide. But, in the case of the Act, that pre-emption argument (and its availability as a defense in a state tort action) may be undercut if not completely vitiated by 42 U.S.C. Section 2996e(b)(3),

providing that the Corporation cannot interfere with any attorney in carrying out his professional responsibilities or abrogate the authority of a State to enforce the standards of professional responsibility generally applicable to attorneys. (*Id.*)²⁵ Arguably, this provision voids any regulation by the Corporation and/or interpretation/application of a regulation that is inconsistent with a local standard of professional responsibility (except for specific issues that the 1996 Appropriations Act provisions attempted to “over-rule”, e.g., disclosure of client name). If sub-section e(b)(3) prohibits LSC from restricting the attorney’s right to provide information in a specific circumstance, then the sub-section also presumptively eliminates the federal regulation as a defense for the legal-services attorney in a state professional malpractice case.

(iv) The Extent to Which Lack of Actual Engagement May “Insulate” the California Attorney From Responsibility Is, at Best, Unclear

CRLA concedes that, at the time that the respective private attorneys and attendees engage in the individual, confidential consultations in the Marysville office, it is unlikely that they have already discussed an engagement between them. Thus, we acknowledge that an initial question is whether California’s “duty” element ever exists with respect to an individual with whom the attorney has not entered an engagement, *i.e.*, an attorney-client relationship has not otherwise occurred. If the attorney has no “duty” whatsoever to someone who solicits her/his services but whom the attorney has declined to represent, then there may be no tension between the California’s professional-responsibility obligation(s) and LSC’s restriction. Whether this duty exists is unclear to us, currently.

Flatt, supra, addressed an attorney’s failure to advise a (former) client of the statute of limitations and, thus, suggests that there need not be a

²⁵“The Corporation shall not, under any provision of this subchapter, interfere with **any attorney** in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as “professional responsibilities”) or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys’ professional responsibilities.” (42 U.S.C., § 2996e(b)(3), boldface added.)

current relationship.²⁶

If the duty to use skill, prudence and diligence that other members exercise can extend to non-clients, then there's a fundamental difficulty in trying to reconcile the California tort concept of professional duty with OCE's concept of how an attorney may appropriately respond to a non-qualified applicant seeking services. In contrast to LSC's binary, fixed-definition approach, the tort concept treats the "**what**" as a comparative value ("such skill, prudence, and diligence as other members of his [or her] profession commonly *possess*") and treats the "**when**" as both a comparative value and case-specific, *i.e.*, to be evaluated by the circumstances of the particular case ("use [the skill, prudence and diligence] as other members . . . commonly *exercise*").²⁷

California's tort approach clearly does not distinguish (a) who pays the attorney at the time s/he exercises this judgment; or (b) between uniquely tailored or "general" information. Thus, OCE's illustration of "legal assistance" by contrasting information about the general length of an applicable statute of limitations²⁸ and informing about a specific expiration date is largely irreconcilable with the California standard for professional responsibility.

If professional malpractice, *i.e.*, duty, must be evaluated on a case-by-case approach (as under California law), do the applicant's circumstances or characteristics or apparent personal resources become part of the equation? *I.e.*, Would "general" information advising an applicant of the existence and term of the statute of limitations meet the standard in one case (e.g.,

²⁶ Ironically, OCE commonly illustrates the distinction between permissible legal information that may be provided a non-qualified individual and impermissible legal advice that may not be provided to a non-qualified individual through a statute-of-limitations example.

²⁷ As a practical matter, a legal services attorney confronting an applicant seeking services cannot engage in some calculus of whether failure to provide certain information will indeed be the proximate cause of actionable damages somewhere in the future.

²⁸ We question the realism of an illustration stating that providing merely the overall length of the applicable statute of limitations does not rise to a level of legal analysis applicable to the applicant's concern: the adviser must still evaluate whether the applicant's concern raises a claim for statutory damages (3-year statute), for a statutory penalty (1-year statute) or potentially a claim pursuant to an oral agreement with a different statute. Indeed, the adviser may have to evaluate whether all three statutes of limitations may be applicable to varying aspects or claims inherent in the applicant's "single" concern.

where the applicant is, himself, an attorney) but fail to meet the standard for an applicant with different personal resources (e.g., non-U.S.-educated, non-English-speaking)? Indeed, even assuming applicants with similar personal resources, does the standard require a different response in a circumstance where it's apparent that the statute may expire in only two days from the consultation as contrasted to a circumstance where the statute clearly will not "run" for another year?²⁹

Remember, in each of the above (as in all cases), the standard is the use of "such skill, prudence, and diligence as other members of his [or her] profession commonly possess **and exercise**." (*Budd, supra.*) Do members of the California Bar commonly provide more explicit information concerning the expiration of the statute of limitations to non-clients where they perceive that the non-client has more-limited personal resources or where they see that the expiration is more imminent, approaching the need for "emergency" measures? We strongly suspect that the average juror, upon learning that the attorney, although aware that the applicable statute of limitations would expire in two more days, limited her advice (to the rejected applicant) to saying only that there was a general 2-year statute of limitations from the time of the injury, will be more than inclined to find that attorney negligent.

We suspect that the average California attorney, perceiving that risk, will indeed warn the otherwise-rejected applicant, of the apparent specific consequence. But if attorneys do commonly alter the extent of their information based upon these individualized circumstances, *i.e.*, on a case-by-case basis, then there appears to be tension between the California law of "professional malpractice" ("the duty of the professional to use such skill, prudence, and diligence as other members of his [or her] profession commonly possess and exercise.") and OCE's application of § 1626.

²⁹A California jury might well find no malpractice where the attorney, having determined and advised that s/he will not enter an engagement, advises the applicant generally that a three-year statute of limitations applies when the attorney correctly perceives that at least two more years remain before expiration. A California jury is much more likely to "hang" the same attorney who, having determined that s/he will not enter the engagement, provides the same "general, non-tailored" information (still correct as a general matter) where the attorney also realizes, but does not advise, that the statute will expire 2 days hence - - unless the court takes the issue away from the jury by ruling that, as a matter of law, no duty exists with respect to a non-client. *Flatt, supra*, leaves this - at best - unclear. OCE's binary, discrete approach (discussed above) does not account for this. Of course, these kinds of questions can arise with respect to issues other than statutes of limitations.

(e) The Draft Report raises the concern as to whether private counsel's individualized consultation with a then-non-qualified attendee who ultimately is determined to be LSC-eligible (and counted as a CSR case) and the same consultation with an attendee ultimately determined to be ineligible (and counted only as a CSR matter) is inconsistent with the CSR Handbook. (*Id.*, § 2.3, p. 4 fn. 11.)

We propose to achieve compliance with the CSR Handbook by abandoning our practice of processing those clinic attendees who meet briefly with private attorneys through our intake and eligibility procedures and then reporting qualified individuals as cases; henceforth, we will simply treat and report all attendees as CSR matters.³⁰

Corrective Action No. 10:

Cease the practice of providing (and reporting) the same level of assistance as a case for an eligible client and as another service for an ineligible client;

See discussion addressing "Clinics" under **Corrective Action No. 9** (above, at pages 21-33).

Corrective Action No. 11:

Ensure the Santa Rosa office has implemented its new procedures to ensure that all legal assistance provided by the private attorney is accurately documented and that reported as PAI cases. A description of the procedures should be provided.

The Santa Rosa office hosts a monthly bankruptcy clinic at which attendance is by advance reservation; attendees are previously screened by CRLA for eligibility. Under procedures revised in accord with the DR, a volunteer attorney provides generalized "legal information" during the clinic on bankruptcy procedures and discusses the forms required to initiate a bankruptcy petition. The volunteer attorney sometimes arranges for individualized follow-up consultations with CRLA-eligible attendees which take place separately. The volunteer attorney notifies CRLA office staff about any follow-up consultations with eligible attendees and provides CRLA copies of written notes documenting any advice and counsel provided at these consultations. These notes are added to the CRLA file for the respective client. [Exhibit **F**, attached.]

Upon closing, files that document provision of legal advice and counsel are CSR-reported as cases (and coded, appropriately). Files where no legal assistance (advice and counsel) is documented are closed as matters. Files for non-CRLA-eligible clinic attendees are rejected as

³⁰This course will further minimize any § 1626 overhead concerns arising from staff engaging in the time to acquire and evaluate intake/eligibility information.

ineligible matters.

All new case files are reviewed weekly by CRLA staff.

CRLA COMMENTS IN RESPONSE TO RECOMMENDATIONS

Recommendation No. 1:

Consider backing up its CSR data at the time of submission to LSC, so that this data can be easily retrieved for analysis;

PSTI advises us that our ACMS data is backed up as follows:

- locally on our internal server periodically throughout the day;
- remotely (to a different server at a different physical location) nightly;
- data is stored for approximately one month before it is overwritten.

PSTI further advises us that full database restores are performed each week for each customer's database, and that PSTI restores data weekly to development (test) sites to ensure that data backups are working.

Recommendation No. 2:

Periodically review its open case lists, program-wide, to ensure timely closure of completed case files;

CRLA has developed an interim solution for this pending rollout of an upgrade for LegalServer which will include a "Case Exception" program that will generate an automatic report on each advocates' home page of a variety of "case exceptions" including open cases for which no time record has been posted for 90 days or more. The upgrade is being developed for LSNY and will be available to all users once it is completed, which we understand will be before the end of the year. As an interim solution, CRLA will revise the Advocacy Manual and send notice out to all DLATs, DAs, RDAs, and ALSs of the following protocol:

The following new provisions (noted in **BOLD**) have been added to the Advocacy Manual

V.2 Ch.4D(1) Closing -- Advocate Responsibility

The advocate's responsibility includes:

- **Close cases within 10 days of determining that no further legal assistance will be provided;**

• **Regularly, and at least quarterly, run a list of all assigned open cases with no time recorded within the last 90 days to determine whether any cases are ready to be closed;**

• Organize and assure that the physical and electronic files on each case to be closed are complete; [get doc and add link to CRLA Case File Checklist]

• Pay to the client any trust funds held in the CRLA account; [get doc and add link to CRLA Trust Account Checklist]

• Return original documents (e.g., checks, contracts, promissory notes, etc.) to the client;

• Either

• (1) send a closing letter to the client advising that the case will be closed, the reasons for closing the case, giving notice of any appropriate deadlines for appeal or other action by the client and terminating the attorney-client relationship; or

• (2) consult with the client, advising that the case will be closed, the reasons for closing the case, giving notice of any appropriate deadlines, statutes of limitations or actions to be taken by the client and terminating the attorney-client relationship. Immediately after any closing consultation with the client, enter a case activity note in CMS stating the content and date of the communication.

• Prepare and place in the file a memo to the file documenting any closing meeting [electronic and physical]

• Prepare a closing memorandum for the file and designate the outcome (outright win, generally favorable, generally unfavorable, outright lost, other) describe the main benefit to the client and enter the estimated monetary value to the client and community;

• Deliver the file to the DA or ALS for further closing procedures.

V.2 Ch.4D(2) Closing -- DA Responsibility

The CRLA Directing Attorney (or delegate) must:

• **Regularly, and at least quarterly, run a list of open cases with no time recorded within the last 90 days to determine whether any cases are ready to be closed [LINK TO 90 DAY NO TIME RECORD RPRT FORM IN CMS]**

• **Review the 90 Day No Time Record Cases with each advocate individually or at case review to determine why no activity has taken place ;**

• **Ensure appropriate followup or closing of cases;**

• Review the activity in each case to be closed to assure that CRLA:•(1) has complied with its professional responsibility in meeting the needs of the client's original and developed objectives, and

•(2) has advised the client of relevant deadlines for appeal or other action as may be appropriate.

• LSC Performance Criteria, Performance Area Three, Criterion 1(b) and (c), ABA

- Review the electronic and hard copy in each case file to be closed to assure that the contents are complete and that the activity report complies with the funding requirements;
 - (1) The DA will confirm that the CRLA Case File and Trust Account check lists have been completed by the ALS [LINK CRLA Case File Checklist, Trust Account Checklist]
 - (2) **The DA will review the hard copy intake sheet and ensure that all information contained in the CMS electronic intake fields are consistent; that the electronic intake has been revised to accurately reflect intake information, as appropriate; or that any inconsistencies that cannot be reconciled are explained in the case notes.**
 - **[PRACTICE NOTE: For instance if upon review of eligibility information, an error was discovered and that correction was made in the electronic record, that fact should be indicated in the related note field (i.e. “citizenship notes” in the citizenship status screen) or in a case note if a related note field is not available. ³¹**
- Assure that all monies and original documents have been returned to client;
- Approve the closing memo and deliver the file to the ALS, or delegate, for further closing procedures.
- Review whether the case was closed within 10 days of the advocate's determination that no further legal assistance would be provided, and, if not, address with the primary advocate.**

Recommendation No. 3:

Ensure proper application of the CSR problem code categories and provide staff with training regarding these practices;

CRLA currently undertakes a review of reported problem codes at the time of case acceptance and, again, during Closing Case Procedures (which includes a review of all reportable CSR data) when we close the record in our ACMS.

We will be providing further training to staff on assessing the proper problem code at both case acceptance and case closing.

Recommendation No. 4:

Revise its Intake Form so that there is a place for the reviewer to document the date upon

³¹Note, this subsection was revised to address OCE Item 2.

which the applicant's eligible alien status was reviewed by CRLA;

Our revised Intake Questionnaire [Exhibit **B**] has been so modified (above, p. 6).

Recommendation No. 5:

Review its conflicts check practices to pre-screen for conflicts prior to obtaining confidential information from applicants;

A revised intake form [Exhibit **B**] that more closely tracks the CMS screens (referenced in Corrective Action No. 1.b. (pages 3-4, ante) is currently under review which also obtains information that will allow us to do a conflicts check before obtaining confidential information.

Recommendation No. 6:

Ensure it notifies donors of funds exceeding \$250 with written notification of the prohibitions and conditions on use of the funds resulting from the receipt of LSC funding pursuant to 45 CSR § 1610.5.

As of January 1, 2011, CRLA began the practice of including the full § 1610.5-notice language in all individual donor acknowledgments. [Exhibit **G**, attached.] During its visit, the Audit Team encountered acknowledgments that pre-dated this change.

Recommendation No. 7:

Review its co-counseling case closing practices to develop a consistent methodology for determining whether to close co-counseling cases as staff or PAI cases.

We have addressed this Recommendation in our response to Corrective Action No. 6, under sub-title **X-1 "Co-Counseled Cases and PAI"** (above, pages 11-13).

CRLA COMMENTS IN RESPONSE TO "FINDINGS" WITHIN TEXT

In addition to the concluding CORRECTIVE ACTIONS and RECOMMENDATIONS, the DR at various points in the textual "Findings" presents a number of observations or conclusions that merit response and/or invites CRLA to answer specific questions. We, here, attempt to do so:

Finding No. 2 (pages 18-20):

[The DR asks CRLA to explain whether our "field monitoring" is supported with LSC funds; whether we report (any of) this activity as CSR cases; and - if so - how we justify doing so without a client. The DR further observes that our Delano office does not prepare client intakes when receiving requests for field monitoring, and that our Fresno

office reports field monitoring under a single CSR case which is opened and closed each calendar year.]

BACKGROUND: “Field-monitoring” references CRLA staff time engaged in driving on public rights of way past agricultural work sites (“fields”) and observing whether various typically-visible federal and/or California required occupational protections are present. The latter might include visible facilities such as field toilets, hand-washing facilities and drinking water provisions, and shade structures required above certain temperatures; they may also include certain visible - and prohibited - practices such as: use of short-handled tools in weeding and thinning; and use of driverless tractors. Upon observing apparent violations, staff may - as determined by the circumstances and in compliance with local law (regarding trespass): discuss their observations with identifiable worksite supervisors; in some circumstances, such as visible absence of drinking water or shade structures during periods of intense heat, telephone the local office of the appropriate enforcement agency - typically, California’s Division of Occupational Safety and Health (“DOSH”) - to report their observations; subsequently informally advise the employer and/or DOSH of their observations; and on some occasions prepare formal declarations concerning their observations that are submitted to DOSH. Occasionally, staff are called as witnesses in DOSH proceedings arising from issuance of citations and penalty assessments.

Farm workers view CRLA’s activity reviewing field conditions as being of critical importance to their health and safety. The overwhelming majority of field workers in California are engaged directly by contractors (many of whom are unlicensed) and perform labor in any given field (including vineyards and orchards) - owned or operated by any individual “grower” - for only relatively brief periods before being moved to perform labor at other locations owned and operated by other growers. The type of labor performed and the crop upon which the labor is performed may remain constant (for multiple growers within a region) for only a few weeks before the work changes to a different type of service on a different type of crop. The widely-acknowledged, exceptionally competitive and cost-driven nature of agricultural production in California motivates growers and their contractors to minimize costs and to emulate any competitor’s practice that lowers cost. A contractor who successfully underbids his competitors at one location through a cost-reducing practice of failing to provide toilets and drinking water, will engage in the same practice the following week at the next location. A contractor who lost a bid due to his competitor’s lower cost resulting from failure to provide toilets and drinking water will at the next location attempt to undercut that competitor, which generally can be accomplished only through cutting her or his own costs through similar strategies. And if competitor B sees that A has “gotten away” with corner-cutting in a particular valley or region, B will assume that she/he can similarly “get away” with the same corner-cutting. Farm workers are cognizant of these patterns and recognize that, even when they may not personally be subject to a given violation on a particular day they work in one field, they will encounter it shortly as they either move on to neighboring fields or as their own contractor shortly adopts a new cost-competitive practice. And, of course, many have spouses, children or even parents who are working in those neighboring fields. Workers desire and are eager to see that occupational safety and health practices in the surrounding worksites in the region remain compliant because they

will inevitably suffer “tomorrow” what is permitted to occur “today.” Farm workers value and desire this assistance in ensuring that their conditions are compliant because of their well-founded perceptions that to individually and directly step forward to assert - even informally - a complaint directly to an employer is a virtual guarantee that they will no longer be employed the following morning. Thus, they come to, and consult with, CRLA concerning how to maintain standards and request CRLA’s assistance to “provide a level playing field.” And they execute retainers explicitly requesting CRLA to provide this service.

This service requested by our farmworker clients does not differ functionally from that requested of lawyers on a daily basis by businesses in every sector. The latter retain lawyers to review the conduct and practices of their vendors, their purchasers and customers, their competitors, their regulators and other elements of their business environment - all to insure through both advising the respective client of violations and opportunities to remedy, and equally to communicate on their behalf informally and formally with these other parties and appropriate regulators - for the purpose of ensuring that the clients function in the optimal circumstances and with maximum protections.

Accordingly, we believe that this activity is fully consistent with the definition of “legal assistance” in the Act (42 U.S.C., § 2996A, subd.(5)) that is not prohibited by any other provision of the Act or LSC’s Regulations. (See, e.g., 45 CFR, § 1610.2.) Consequently, CRLA has historically reported substantial - but, again, not all - of this activity as CSR “case” activity consistent with 45 CFR § 1620.2, subd.(a), but in each such situation does so only where the activity is undertaken pursuant to eligible-client executed retainers. Under the current CSR Handbook, closure of these cases would ordinarily be Category “K”.

As the DR observes, CRLA also undertakes field monitoring in particular circumstances (communities, crops, operations) where we do not have an individual retainer so requesting. Several reasons justify doing so. Virtually no other activity so immediately and directly informs our staff of current conditions being confronted by our eligible client community. (See, LSC: *Legal Services Corporation Performance Criteria*, Performance Area One, Criterion 1 (pp. 5, 7-8), Criterion 2 (pp. 6, 9-10).) These experiences inform us immediately of the subject matter for and geographic areas in which to develop and provide further community education and legal information (cf., 45 CFR, § 1620.2, subd.(b)); they inform us of where resources may need to be allocated or re-allocated. (*Performance Criteria*, supra, Criterion 2, supra (pp. 9-10), Criterion 4 (p. 6).)³² Few other activities provide such productive opportunities to educate remote and

³²Within the farmworker context here discussed, these Performance Criteria are logical extensions of LSC’s own earlier report to Congress (LSC: *Special Legal Problems and Problems of Access to Legal Services of . . . Migrant and Seasonal Farm Workers: A Report to Congress As Required by Section 1007(h) of the . . . Act of 1974 . . .* (1979), page 36) and of the American Bar Association’s subsequent analysis. (ABA, Standing Committee on Legal Aid and Indigent Defendants, *Study of Federally Funded Legal Aid For Migrant Farmworkers* (1993)

widely-scattered eligible clients concerning the existence, presence of, and availability of services, from CRLA. (Cf., § 1620.2, *supra*, at subd.(b).) As we previously informed the LSC Board directly during its 2005 visit to Monterey County, in the first-ever such agreement in the nation, DOSH executed a memorandum of understanding with CRLA to issue citations based upon CRLA's documented observations. (See, Performance Area One, Criterion 2, *supra*, "To the extent that pressing legal needs have been identified which the program will not, because of resources or other limitations, be able to address directly, the program should consider . . . innovative or alternative delivery approaches . . . or collaboration with or referral to other entities . . . To provide some measure of assistance to affected individuals or communities", *id.*, p. 6.) CRLA has historically reported staff time for this activity as "matter."

CRLA undertakes substantial - but not all - of field monitoring activity utilizing LSC funds. Other sources of funding that vary in availability and quantity over time include the State of California (through both legislative sources of funds and agency grants), the U.S. Department of Labor, and various major private grantors.

We are revising certain policies and guidance (e.g., through our Wiki-based Advocacy Manual) to ensure and improve our offices regularized communications with clients who retain us to undertake field monitoring, to clarify time-keeping and reporting responsibilities for field-monitoring, and to generally ensure that all our offices are complying with institutional expectations and staff responsibilities.

CRLA believes that this clarification of "field monitoring" should resolve any concerns arising under the Act or the LSC Regulations. We, of course, welcome the opportunity to participate in dialog about any further concerns.

Finding No. 6 (pages 29-30):

[The DR observes that some client retainers failed to identify the legal problem for which representation was sought, and the nature of the service to be provided.]

CRLA's Wiki-based Advocacy Manual has been amended (Vol. I, Ch. 6A(1) - "Procedures for Retainer Agreements") to include the following language:

Retainer agreements must be (1) completed with a clear statement of the assistance to be provided to the client, (2) executed by the client and CRLA, (3) translated as appropriate, and (4) made a part of the client's file in all open cases.

pages 23-34.)

A following provision requires that once the case has been accepted and assigned to staff, a copy of the original retainer must be sent to the client with a cover letter formally stating that the case has been accepted.

Finding No. 13 (pages 36-37):

[The DR recommends that CRLA update our "Outside Practice of Law" policy to include the definition currently provided in 45 CFR § 1604.]

The following has been uploaded into Chapter 4 of CRLA's in-process Wiki-based Advocacy Manual:

Chapter 4 Restrictions Applicable to CRLA Employees

•OUTSIDE PRACTICE OF LAW "45 C.F.R. Sec. 1604" - "Outside practice of law" means the provision of legal assistance to a client who is not receiving that legal assistance as a client of CRLA

- No fulltime CRLA employee, union or non-union, may engage in the outside practice of law for compensation, except in connection with the closing out of cases from previous law practice, or pursuant to court appointment, as permitted under this policy and 45 C.F.R. Sec. 1604.7, and only insofar as any compensation is for time billed is non-CRLA time.
- Part-time CRLA employees may engage in the outside practice of law, for compensation, consistent with the terms of their part-time contract with CRLA, and subject to the approval of the Executive Director. Insofar as it is not inconsistent with the terms of the part-time contract, the limitations imposed on full-time employees' outside practice of law may be applied to Part-time employees.
- An employee may engage in the outside practice of law, as provided in this section, and only after approval by the Executive Director.
- Circumstances under which the outside practice of law may be permitted by fulltime employees:
 - The Executive Director or the director's designee must make a determination that representation in such case or matter is consistent with the attorney's responsibilities to CRLA's clients; and that the requesting employee is:
 - 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; or
 - Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or
 - Acting on behalf of a religious, community, or charitable group; or
 - 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; or
 - Acting pursuant to court appointment and consistent with the provisions of 45 C.F.R. Sec. 1604.7
- Except as provided in 45 C.F.R. sec 1604.7, any employee engaged in the outside practice of law may not intentionally identify the case or matter with the LSC Corporation or CRLA.

Finding No. 14 (pages 37-38):

[The DR observes that program-wide staff training regarding 45 CFR § 1608 is needed.]

CRLA will be conducting a training of DLATS, Regional Directors and Project Directors. In turn, DLATS, RDs and PDs will be expected to conduct trainings in each of the Regional offices by no later than August 31, 2012 and to document staff attendance at the training.

CRLA has addressed the requirements of 45 CFR 1608 in the revised Advocacy Manual:

PROHIBITED POLITICAL ACTIVITIES

45 CFR 1608 prohibits CRLA and its employees from engaging in various political activities.

CRLA is prohibited from:

1. Using any political test or qualification in making any decision, taking any action, or performing any function;
2. Contributing any funds or making any funds, personnel or equipment available
 - a) to any political party or Association;
 - b) to the campaign of any candidate for public or party office; or
 - c) for use in advocating or opposing any ballot measure, initiative, referendum. [45 CFR 1608.3].

CRLA employees, whether on CRLA time or on personal time, are prohibited from intentionally identifying or encouraging others to identify CRLA with:

1. Any partisan or nonpartisan political activity; or
2. With the campaign of any candidate for public or party office. [45 CFR 1608.4]

CRLA employees are prohibited from using any corporation funds or during working hours engaging in:

1. Any political activity;
2. Any activity to provide voters with transportation to the polls or to provide similar assistance in connection with election, or
3. Any voter registration activity. [45 CFR 1608.6]

CRLA staff attorneys, whether on CRLA time or on personal time, are prohibited from:

1. Coercing, commanding or advising another CRLA employee to "pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes;" or
2. Being a candidate for partisan elective public office. [45 CFR 1608.5]

Finding No. 16 (pages 41-42 fn. 80):

[The DR recommends that our San Luis Obispo office should not store client files in areas accessible to non-CRLA personnel who are present in common areas.]

Fourteen file cabinets containing client and/or other confidential materials have been removed from areas in our San Luis Obispo office that were accessible to non-CRLA personnel and re-located in private offices. Per local-office policy, these offices are locked at night.

Finding No. 19 (page 55):

[The DR recommends that CRLA consider retaining outside technical assistance to determine the feasibility of using our ACMS for contemporaneous entry of all staff work time including payroll timekeeping.]

An Excel macro was written in 2011 that could convert an exported time detail report from our ACMS into a payroll timesheet ready for supervisor review and approval. That version, however, worked only for exempt employees. (A macro for non-exempt employees is more complex due to the need to record starting and ending work times.) The design, however, did not accommodate CRLA's reduction-in-hours that was effected January 1, 2012 and rescission of that reduction on July 1, 2012. There also continue to be issues with achieving a macro capable of handling work schedules that vary. Currently, our estimated completion date for the macro for exempt employees is September 30, 2012; our estimated completion date for the macro for non-exempt employees is December 31, 2012.

Finding No. 21 (pages 57-58):

[The DR instructs that CRLA must maintain separate records in accord with 45 CFR § 1612.10(b).]

CRLA already maintains separate electronic records of all time spent on permitted activities under 45 CFR 1612.10(b). That information can be retrieved by 1612 Project PAR file, client file, or by advocate.

A hard copy of each written legislative request received and written responses made in response thereto pursuant to 45 CFR 1612.6(d) is maintained by the Deputy Dir. Executive Assistant. Each request and final response is also maintained in electronic form in the associated 1612 Project PAR in CMS, or related client file.

The Deputy Dir. Executive Assistant also maintains a separate file of the semi-annual 1612 reports, which includes hard copies of all legislative requests, as well as applicable

notices of public rulemaking (although the latter is not required by 1612.6(e)).

The Accounting Department posts all 1612 related expenses electronically and they can be retrieved by that reference

Effective July 1, 2012 CRLA will also require that the Accounting Department run a semi-annual report of all 1612 related expenses, which will be submitted to the Deputy Dir. Executive Assistant who will maintain it in the hard copy file of supporting documents for the 1612 reports.

Effective July 1, 2012 CRLA will also require that all final written submission in response to 1612.6(d) requests and all final comments submitted with respect to a 1612(e) public rulemaking proceeding will be submitted to the Deputy Dir. Executive Assistant who will maintain it in the hard copy file of supporting documents for the 1612 reports.

The CRLA Electronic Advocacy Manual has been revised to reflect these changes. The relevant sections, with the updated provisions (**in Bold**) are copied below.

V.1 Ch.5B(4) Recordkeeping and Reporting Related to Permitted Communications to Public Officials (Cohen-Bumpers)

.....

The Lead Advocate is Responsible for Reporting and Setting-up Records.

On federal and state legislative and/or regulatory activities, the lead advocate may be a DLAT or other advocate designated by the respective Task Force. On local legislative and/or regulatory activities, the lead advocate may be a Directing Attorney or other staff advocate designated by the D.A.

The lead advocate on each Cohen-Bumpers activity must:

- Prepare the 1612 Project PAR.
- Advise all Task Force members or advocates who may participate in the activity of the uniform "identifier" by which to report work on the activity.
- the need to comply with Cohen-Bumpers procedures described in this chapter.
- Maintain a Cohen-Bumpers activity file that includes copies of the written invitation and/or public notice that triggers the activity — electronic invitations and/or notices shall be promptly printed or converted to pdf for upload.
- Promptly forward a copy of the written invitation and/or public notice that triggers the activity together with the 1612 Project PAR "identifier" for the activity to the Deputy Director Administrative Assistant and upload a copy of the written invitation and/or public notice to the 1612 Project PAR.
- **Promptly upload a copy of the written response to the request (if**

- any) to the 1612 Project PAR.
- Review the 1612 Semi-Annual Report prepared for LSC to ensure that all related time has been reported, and at that time submit a copy of the written response (if any) to the Deputy Director Administrative Assistant who will maintain a copy in her semi-annual report backup file.

....

CRLA Maintains a Master File of Cohen-Bumpers activities

- CRLA's Deputy Director Administrative Assistant maintains a separate archival file of Cohen-Bumpers work and communications for each Cohen-Bumpers Activity during, and for five years following completion of work on the Activity.
- The Accounting Department will submit a semi-annual report of all 1612 related expenses (excluding staff time) to the Deputy Director Administrative Assistance who will maintain the report in the archival file.

Finding No. 21 (pages 58-60):

[The DR asks CRLA to submit our position concerning why representation of individual clients engaged in statutorily-required pre-litigation exhaustion of remedies was consistent with 45 CFR § 1612 when CRLA advocacy addressed problems affecting a larger, general populace.]

The DR finds that CRLA's Madera office and Community Equity Initiative Program on behalf of certain retained clients undertook client representation vis a vis California's High Speed Rail project justified as pre-litigation exhaustion of administrative remedies pursuant to California Public Resources Code (CEQA) Sections 21000 et seq. However, the DR observes that the content of CRLA's pre-litigation administrative comments was not limited to describing threatened specific injuries to CRLA's clients but further addressed general, systemic problems faced by local populations. The DR questions whether CRLA's comments addressing impacts not limited to our specific clients but as to members of the larger community may have constituted efforts to influence public policy in violation of § 1612. Thus, while OCE does not question that CRLA comments on behalf of our clients could have been justified as appropriate pre-litigation exhaustion of remedies, OCE provisionally concludes that the breadth of the communications' content made them general public-policy advocacy subject to § 1612 requirements for prior written invitation and/or notice of public rule-making.

OCE acknowledges that it has not yet taken a final position with respect to this issue and requests CRLA "to submit its position as to why this representation [of CRLA's High-

Speed Rail clients] is consistent with § 1612.” We do so here.

Detailed reference to authority should not be necessary to recognize that a private litigant’s advocacy position is inevitably strengthened when the litigant can equate her private interest with the interests of the general public. Advocating that the litigant’s interest is congruent with that of the general public, and/or that injury to the litigant will also result in injury to the general public, is inevitably a powerful argument for the individual party. Restricting the litigant’s recipient-attorney from presenting this argument “truncates the presentation” and “distorts the legal system” precluding proper presentation to the decision-maker and thus undercuts both the party’s ability to prevail and the decision-maker’s ability to properly resolve the dispute. (*LSC v. Velasquez* (2001) 531 U.S. 533, 544-546.)

Just as the party’s interest in actual litigation is to prevail, the interest is the same in pre-litigation efforts to avoid litigation. The pre-litigation efforts are no more idle exercises than the subsequent litigation; the goal of the former is to convince the adverse agency/party to acquiesce in the party’s position in order to avoid the expense and further delay of litigation. If injury to the general public is material to the party’s litigation position, it is equally material to the party’s pre-litigation effort to convince the agency to avoid litigation. The fundamental logic of pre-litigation efforts including administrative comments is subverted if the party must forego potentially one of her strongest and convincing arguments.

Beyond the dictates of this logic, the individual party’s obligation to reference the general public’s interest becomes even more crucial where the party seeks to enforce a statutory scheme as here that is intended to preserve the *public* welfare, and under which decisions are to be guided by *public interests*. (Public Resources Code, *supra*, e.g.: § 21000, subd.(a) - “[t]he maintenance of a quality environment for the **people** of this state now and in the future is a matter of statewide concern”; subd.(c) - “[t]here is a need to understand the relationship between the maintenance of high-quality ecological systems and the **general welfare of the people** of the state”; subd.(d) - “[the interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and **concerted efforts by public and private interests** to enhance environmental quality”; § 21001, subd.(b) - “. . . . [I]t is the policy of the state to Take all action necessary to provide the **people of this state** with clean air and water, enjoyment of environmental qualities”; subd.(d) - “[e]nsure that the long-term protection of the environment . . . for **every Californian, shall be the guiding criterion in public decisions.**”; § 21003.1, subd.(a) - “Comments . . . on the environmental effects of a project . . . shall be made in order to allow the lead agencies to identify, at the earliest possible time potential **significant effects** of a project”) In short, CEQA is concerned with the public interests and proceedings thereunder and litigation ultimately challenging those proceedings must address public interests.

California courts have further emphasized the relationship between CEQA and the interests of the general public. Environmental Impact Reports prepared in accord with the statute serve not only to protect the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 809-810; see, also, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 86; *People ex rel. Department of Public Works v. Bosio* (1975) 47 Cal. App. 3d 495, 529.)

Moreover, the CEQA requires that pre-litigation exhaustion be issue-specific; to preserve the right to litigate it is not enough to simply say beforehand, "I object". The prospective party must have identified the objectionable issues or grounds in order to subsequently litigate. (See, Public Resources Code, supra, § 21177, subd.(a) - "[n]o action or proceeding may be brought . . . unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period . . ."; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 282 - "[O]bjections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them. Otherwise, the purpose of the exhaustion doctrine would not be served . . ." (group failed to exhaust administrative remedies as to argument that city engaged in improper "piecemeal" analysis of proposed development as required under CEQA because never raised issue of "piecemealing").) Accordingly, if impacts upon the public are to be litigated, they must be identified during pre-litigation exhaustion.

Beyond these state-law statutory requirements, a recipient that represents an eligible client in a permitted substantive area of representation (that may ultimately require non-prohibited litigation) has - along with its client - a First Amendment right that exists through the entire course of litigation. (*LSC v. Velasquez*, supra, 531 U.S., at 544 - 548.) In such representation, LSC cannot restrict the content of the recipient-attorney's arguments and analyses in undertaking that permitted activity. (*Id.*) Just as LSC cannot prohibit a recipient attorney from answering a judge's question as to whether there was a constitutional concern in a welfare case, LSC should not be able to prohibit a CRLA advocate from answering an agency's question as to whether there is any broader public interest in or public benefit arising from the client's position. (*Id.*, at 545.) And *Velasquez* makes equally clear that the LSC attorney doesn't need to wait for the judge to ask the question; if that argument or analysis is in the client's interest, the recipient attorney must be free to volunteer or initiate the argument. (*Id.*, at 544-548.)

Velasquez was concerned with restrictions on the recipient attorney's advocacy in judicial proceedings and did not expressly address restrictions on pre-litigation exhaustion of remedies. But there is no logical reason why the constitutional right to unfettered advocacy should be circumscribed where the particular litigation procedure includes a required pre-litigation comment. Indeed, all logic would point to the contrary: tying the advocate's arm behind her or his back during the required pre-litigation comment procedure obviously precludes the responding agency or opposing party from hearing all

and perhaps the strongest arguments which, if heard, will likely increase the possibilities of pre-litigation resolution. There can be no public interest in playing “hide the ball” at this step of the proceedings and consequently minimizing the possibility that the responding agency will accede to the client-plaintiff’s position. And, as noted, *Velasquez* does make clear that the First Amendment right belonging to the client and to the client’s attorney exists through the entire course of litigation.

Separate and in addition to the First Amendment rights addressed in *Velasquez*, *supra*, and the California statutory requirements, is the question of whether OCE’s application of content limitation in this setting also raises questions as to interfering with the professional responsibilities of attorneys, in possible violation of 42 U.S.C., § 2996e(b)(3). For all of the combined logical, statutory and constitutional underpinnings discussed above, it would appear to us that an LSC conclusion precluding a licensed attorney through content limitation from fully advocating the client’s position raises this question at a serious level.

We emphasize that we do not here challenge the content of 45 C.F.R. Section 1612 generally or as to any particular provision. Our position, however, is that LSC’s application of sub-section 1612.5(a) is limited: once LSC’s inquiry determines that the recipient’s communication *prima facie* qualifies as a required pre-litigation negotiation (with appropriate parties or entities) under applicable law³³, LSC cannot then “dis-qualify” the communication by applying limitations on content.

Finally, CRLA appreciates that OCE has provided CRLA an opportunity to address this issue of content limitation and openly sought input upon what we believe is a matter of important, professional policy.

Finding No. 32 (page 65):

[The DR recommends that CRLA’s Controller review our revised online Wiki policies to determine which may affect fiscal activities that use our ACMS or other record-keeping requirements.]

CRLA concurs. Our Controller is currently reviewing our Accounting Manual as part of planning a comprehensive update and revision.

³³For purposes of this discussion, we assume the recipient represents an eligible client. We note, however, that we do not believe that the recipient and the client must have entered a retainer authorizing litigation as of the time the parties engage in the pre-litigation communication. An array of client interests and professional-responsibility considerations may suggest otherwise. That, however, is a separate topic of discussion not addressed here.

Finding No. 32 (page 65):

[The DR recommends that CRLA's Controller review our Accounting Manual with respect to Appendix VII of LSC's Accounting Guide (2010 ed.).]

CRLA concurs. Our Accounting Manual was prepared prior to release of LSC's 2010 edition of the Accounting Guide which contained 23 new questions concerning electronic transfers and electronic banking. Our Controller is planning a comprehensive update and revision to our Accounting Manual.

Finding No. 32 (page 65):

[The DR observes that CRLA is failing to enforce our internal Accounting Manual policy requiring that staff submit travel vouchers within 45 days.]

CRLA's Controller is currently revising this provision in the Accounting Manual which is no longer consistent with California law.

Finding No. 32 (pages 65-66):

[The DR observes that CRLA's Personnel Manual is outdated.]

CRLA concurs. (Prior to her September, 2011 departure, our then H.R. Director had begun addressing a new Manual with our management counsel. Her successor who began in February, 2012, was unable to reach this project before his unanticipated departure in June. We are attempting to fill the position. Meanwhile, we are also reviewing standardized templates offered by our benefits broker.)

Finding No. 32 (page 67):

[The DR observes that while CRLA has appropriately allocated derivative income, CRLA's Accounting Manual lacks formal policy and procedures for this allocation.]

On June 23, 2012, CRLA's Board of Directors approved a formal Derivative Income Allocation policy and practice, as an addendum to CRLA's Accounting Manual. A copy is attached to these Comments as Exhibit **H**.

EXHIBIT A

**(CRLA Comments In Response
to OCE Draft Report)**

Language: English

Veteran? No

Domestic Violence? No

Case Details Assignments Time Events Tasks/Deadlines Activity Log Referrals Out Disposition Log

Legal Problem Code: 99 Other Miscellaneous

Special Legal Problem: N/A
Code:

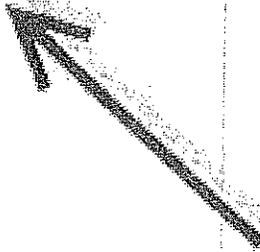
Client Conflict Status: No Conflict

Duplicate Status: Not Duplicate

Adverse Party Conflict Status: No Conflict

Is this matter LSC Eligible? No

Do you have reason to believe that your income is likely to change significantly in the near future? No



Case Notes

Notes

Show Filters

Summary of Facts / Legal Problem (Question)

Worksheet: Case Notes at 12:29 PM by John Hall - Edit

N/A

Advice Given / Plan of Action (Question)

Note Drafts

N/A
2012-06-18 12:25:34
N/A
2012-05-17 09:47:16
Review of Eligibility
2012-05-08 15:39:17
Delete All Drafts

Begin Intake

- 1. General Information
- 2. Applicant Conflict Check
- 3. Adverse Party
- 4. Citizenship and Financial
- 5. Case Questions
- 6. Eligibility Summary
- 7. Disposition

This process is incomplete
Create PDF

Options

Reject Application
Refer and Reject Application
Add Staff Time

Actions

Add New Document
Add Staff Time
Creates New Case For Client
Recommend Pro Bono/Other

Scheduling

Add Deadline
Add Task
New Event

Client Conflict Status is must be set to No Conflict.

Duplicate Status must be set to Not Duplicate.

Adverse Party Conflict Status is eligible

Legal Problem Code is eligible

Citizenship/ Alienage Status is eligible

Client Income (Including Override) is eligible

Assets is eligible

and that this matter is NOT LSC eligible.

Yes No

1/20/2012

Continue



EXHIBIT B

**(CRLA Comments In Response
to OCE Draft Report)**

CALIFORNIA RURAL LEGAL ASSISTANCE

INTAKE QUESTIONNAIRE

IMPORTANT -- PLEASE READ

The following questions will help us determine if you are eligible for our assistance and help us to advise you about your legal problem. Any information you give us is strictly confidential. After we discuss your problem with you, we will tell you whether we can assist you in any way, refer you to other agencies for help, or represent you as your lawyers.

Case Number: _____

TELEPHONE IN PERSON

Date: _____
 Screener: _____ Case Handler _____ Problem Code: _____

Funding: LSC IOLTA _____

Language: Eng Span _____

Closed: _____

Telephone Intake only:

U.S. Citizen 1626 eligible date: _____

NAME _____ Date of Birth _____

SPOUSE/PARTNER _____ Date of Birth _____

STREET OR MAILING ADDRESS _____ City _____ Zip _____

If you move often or have another address, please list on top of page 2 of this form..

PHONE _____ MESSAGE PHONE _____ NUMBER OF ADULTS IN HOME _____ NUMBER OF CHILDREN _____

Additional Address: _____ (under 18)

Additional Phone Number: _____

GENDER (Check ONE) Male _____ Female _____ Transgender Male _____ Transgender Female _____
 (person who identifies with a gender different from the gender assigned at birth)

I CONSIDER MYSELF: (Check all that apply.) Heterosexual/Straight _____ Bisexual _____ Gay _____ Lesbian _____ Other _____ Declined _____
 to Respond

I CONSIDER MYSELF: (Check ONE) Latino/Hispanic _____ Not Latino/Hispanic _____ INDIGENOUS _____

Check all that apply. Asian _____ Black _____ Hispanic _____ White _____ Native American _____ Pacific Islander _____ Other _____ Declined _____

Type of Problem: _____

Names of People causing the problem: _____

Gross Monthly Household Income	YOU	OTHERS
1. Wages	\$ _____	\$ _____
2. TANF/CalWORKs	\$ _____	\$ _____
3. SSI	\$ _____	\$ _____
4. Social Security	\$ _____	\$ _____
5. Child or Spousal Support	\$ _____	\$ _____
6. Unemployment or State Disability	\$ _____	\$ _____
7. Workers' Comp	\$ _____	\$ _____
8. Pension	\$ _____	\$ _____
9. Other	\$ _____	\$ _____
Total Gross Monthly Income:	\$ _____	

I receive General Assistance/Relief
 I receive Food Stamps
 PLEASE COMPLETE ASSET INFORMATION ON BACK OF INTAKE

Household Member Veteran? Yes ___ No ___

Disabled in Household? Yes ___ No ___

Domestic Violence in Household? Yes ___ No ___

Are you a farmworker? Yes ___ No ___

DO YOU BELIEVE YOUR INCOME WILL CHANGE SIGNIFICANTLY IN THE NEAR FUTURE: YES ___ NO ___

If "yes" how will it change: _____

LSC 125% = \$ _____
 LSC 200% = \$ _____
 Supplemental Intake attached

U.S. Citizens: I am a citizen of the United States. Signature: _____ Date: _____

Other: ___ (mark box and provide additional information on Back of Intake)

I attest that the information I have given is true.

Signature: _____ Date: _____

ASSETS

Household Assets Enter zero or amount on every line.

Bank Accounts \$ _____
 Include checking and savings.

Equity in Real Estate (including vacant land) \$ _____
 Do not include the value of the home where you now live.

Stocks, Bonds, IRAs \$ _____

Other Assets \$ _____

Total Household Assets: \$ _____

Possible Authorized Exceptions

- Seasonal variations in income
- Unreimbursed medical expenses
- Fixed debts or obligations
- Employment-related expenses
- Non-medical expenses associated with age/disability
- Responsible for paying current taxes

Supplemental Intake is required. See CRLA Financial Eligibility Policies.

- I will lose welfare or public benefits if legal assistance is denied. Amount \$ _____
- I will lose money or income if legal assistance is denied. Amount \$ _____
- Other harm that I will suffer if legal assistance is denied: _____

Additional Facts About your Case: _____

CRLA Staff Use – DO NOT WRITE IN THIS BOX

1626 Eligible	Title of Document	Number on Document	Date of Expiration	Name if different from above
<input type="checkbox"/> U Visa victim of crime (Victim dom viol or other crime)	<input type="checkbox"/> T Visa (Victim of trafficking)	<input type="checkbox"/> VAWA (Victim of domestic violence)		
Information Collector Signature _____		Date _____		

- Client is eligible and accepted for limited service. ▲ _____
- Client is eligible and accepted for extended service. ▲ _____ ▲DA's or DA's delegate's initials and date.
- Eligible and Accepted. Income is between 125% and 200% with authorized factors. Supplemental Intake with DA approval is attached.
- Eligible and Accepted. Waiver (asset or nursing home income) Supplemental Intake with Executive Director approval is attached.

CLOSING THE CASE

- 1) Confirm funding and problem codes.
 - 2) Choose major reason case was closed.
- A) Counsel and Advice
 - B) Limited Action (letter, call to 3rd party, prep Pro Se docs)
 - F) Negotiated Settlement without Litigation
 - G) Negotiated Settlement with Litigation
 - H) Administrative Agency Decision
 - Ia) Uncontested Court Decision
 - Ib) Contested Court Decision
 - Ic) Appeals
 - L) Extensive Service
- Lost LSC Credit
- 1) Change "LSC Eligible" NO.
 - 2) Use "Q" or "R" closing code.
- Q) Untimely
 - R) Missing Docs, Signature, Assets, Income

REJECTION

- Conflict (no credit)
 - Duplicate (no credit)
 - No Show / No Service (no credit)
 - *Not eligible: income, assets, alienage, problem code, out of area
 - *Referral Only
 - *Other Service Credit
- *AND Choose One Other Service**
- Presentations to Community Groups (CLE)
 - Legal Education Brochures
 - Self Help Kits (Pro Se materials)
 - Workshops or Clinics
 - Refer to Other Source Civil Legal Services
 - Refer to Private Bar
 - Refer to Human or Social Services
 - Not "Other Service" (no credit)

COMMENTS

SAVINGS
 Damages \$ _____ for _____
 Wages/benefits \$ _____ for _____ mos
 Value of property won/saved _____

Other savings to client
 Other relief won _____

EXHIBIT C

**(CRLA Comments In Response
to OCE Draft Report)**



www.moynihan
FORECLOSURE

Are you facing foreclosure?

Have you lost your home?

The Central Coast Foreclosure Collaborative invites you to get **FREE** information about pre & post foreclosure options.

Foreclosure Workshop

Sunday, May 20, 2012 from 1PM-5PM

Civic Plaza Community Room ,

275 Main St. Watsonville , CA 95076

Get free information about:

- Foreclosure Options for homeowners
- Tax-consequences of foreclosure
- Free and low-cost resources for homeowners
- Reporting fraud & avoiding “rescue” scams
- Finding resources for HUD- certified housing counseling, debt & credit counseling, bankruptcy, and emotional support

Spanish Translation will be provided.

For more information, call:

Watsonville Law Center: 831-722-2845

This is a **free event**. CCFC members are: U.S. Congressman Sam Farr, California State Assemblymember Bill Monning, California State Assemblymember Luis A. Alejo, Santa Cruz County District Attorney’s Office, Monterey County District Attorney’s Office, Santa Cruz Superior Court Self-Help Center, Law Offices of Simmons & Purdy, California Rural Legal Assistance (CRLA), SurePath Financial Solutions, The City of Watsonville, Santa Cruz Community Credit Union, COPA, Neighborhood Housing Services, Housing Resource Center, and the Watsonville Law Center.

Solicitors are not welcome at this event and will be asked to leave.



**¿Está enfrentando una ejecución hipotecaria?
¿Ha perdido su casa?**

El Colaborativo de Ejecuciones Hipotecarias de la Costa Central (CCFC) le invita a un taller donde puede recibir información gratis sobre las opciones relacionadas a una ejecución hipotecaria.

Taller de Ejecución Hipotecaria

**Domingo, 20 de Mayo 2012 de 1PM-5PM
Salón Comunitario de la Plaza Cívica
275 Main St. Watsonville , CA 95076**

Reciba información gratis sobre:

- Sus opciones en casos de ejecución hipotecaria para propietarios
- Las consecuencias a sus impuestos
- Información gratis o a bajo costo para propietarios
- Como Denunciar el fraude y evitar estafas de “rescate”
- Como recibir la asistencia de consejeros expertos en materia de vivienda aprobados por HUD de deudas y bancarrota y grupos de apoyo

Será traducido al español

**Para más información, llame al:
Centro Legal de Watsonville:(831) 722-2845**

Este es un **evento gratis**. Miembros de CCFC son: el Congresista Sam Farr, el Asambleísta Estatal Bill Monning, el Asambleísta Luis A. Alejo, la Oficina del Fiscal de Santa Cruz, la oficina del Fiscal del Condado de Monterey, el Centro de Self-Help del Corte Superior de Santa Cruz, as oficinas legales de Simmons & Purdy, Asistencia Legal Rural de California (CRLA), SurePath Financial Solutions, la Ciudad de Watsonville, La Unión de Crédito de la Comunidad de Santa Cruz, el Centro Legal de Watsonville, COPA, Neighborhood Housing Services, Housing Resource Center

Los vendedores de servicios y productos no serán bienvenidos y tendrán que abandonar las premisas

EXHIBIT D

**(CRLA Comments In Response
to OCE Draft Report)**



*The Law Offices of
California Rural
Legal Assistance (CRLA)
And
La Casa De La Raza*

*Will Host Monthly
Labor Law Clinics*

**Beginning:
Thursday May 19, 2011
6:30pm-8:30pm
La Casa De La Raza
601 East Montecito Street
Santa Barbara, CA 93103
(Every Third Thursday
Of Every Month)**



THIS EVENT IS FREE OF CHARGE!

Come with your employment/labor law questions and have an attorney offer free legal advice and education on your legal rights.

Snacks will be provided!

For More Information:

Visit our website: www.crla.org
Or call CRLA at: (805) 963-5981

"Fighting For Justice, Changing Lives"



*The Law Offices of
California Rural
Legal Assistance (CRLA)
y
La Casa De La Raza*

*Les Invitan A Clínicas de
Talleres y Asesoramiento Legal de
Sus Derechos en Empleo y Labor*

**Empezando el:
Jueves 19, de Mayo 2011
6:30pm-8:30pm
La Casa De La Raza
601 East Montecito Street
Santa Barbara, CA 93103**

**(Cada Tercer Jueves
De Cada Mes)**



ESTE EVENTO ES GRATIS!

Venga con preguntas acerca de sus derechos en empleo y labor
para que un abogado le aconseje completamente gratis!

Acompáñenos y Disfrute Pan Dulce!

Para Más Información:

Visite nuestra página: www.crla.org

O llámenos al: (805) 963-5981

"Luchando por justicia, y cambiando vidas"

EXHIBIT E

**(CRLA Comments In Response
to OCE Draft Report)**

California Rural Legal Assistance
of Santa Barbara

In collaboration with La Casa de La Raza,
Would Like to Invite You To:
Our Monthly Labor Law Clinic



**Thursday
July 21, 2011
630pm-830pm
at La Casa De La Raza
601 East Montecito St
Santa Barbara, CA
93103**

**Clinic will also be
taking place every 3rd
Thursday of every
month**

THIS EVENT IS FREE OF CHARGE!

We will be presenting on different labor rights and be offering
services for any legal questions you might have

SNACKS WILL BE PROVIDED!

For More Information:
Visit our website: www.crla.org
Or call: (805) 963-5981
"Fighting For Justice, Changing Lives"



California Rural Legal Assistance
De Santa Barbara

En colaboración con La Casa de la Raza,
Quisiera invitarlos a:

Nuestro evento mensual sobre
los derechos de trabajadores



**El Jueves,
Julio 21, 2011
630pm-830pm
en La Casa De La Raza
601 East Montecito St
Santa Barbara, CA
93103**

**Este evento también
se llevará a cabo cada
3er jueves de cada
mes**

ESTE EVENTO VA SER GRATIS!

Estaremos presentando sobre diferente derechos de trabajadores y ofreciendo
servicio para cualquiera preguntas legales que tengan.

BOCADILLOS SERÁN SERVIDO

Para mas información:
Visite nuestro sitio web: www.crla.org
O llama: (805) 963-5981
"Fighting For Justice, Changing Lives"



EXHIBIT F

**(CRLA Comments In Response
to OCE Draft Report)**

To: CRLA Santa Rosa Staff

From: Jeff Hoffman

Re: Procedures for Workshops

Effective: February 2012

This will confirm that the following procedures shall be in place with respect to the processing of cases for applicants attending any of our Workshops.

Frequency of Clinics:

All Workshop shall take place at previously designated times during the month. All workshops shall take place on a regular basis. Workshops are not scheduled on an ad-hoc basis. The Directing Attorney must pre-approve implementation of any Workshops to be provided by the office.

Publication and Publicity

Workshops shall be publicized in advance. Fliers shall be posted in the office, staff shall endeavor to provide information and fliers to other providers of services to our clients and well as to the community in general. When appropriate, staff shall verbally inform applicants in the office or over the phone, of upcoming Workshops. Staff may utilize other means of publicizing workshops, such as adds in local publications.

Procedure for Documenting Services Provided During Workshops

Attendance at Workshops is by advance reservation. Staff maintains a written list of all scheduled attendees, which includes name, address and phone number. A confirmation letter is sent to the scheduled attendees at least one week prior to the workshop. All Workshop attendees shall complete a CRLA intake form and are screened for CRLA eligibility prior to the commencement of the workshop. During each Workshop, the presenter, whether a volunteer or CRLA staff, shall provide general information on the issues that the are subject of the Workshop. All Workshop presenters, whether volunteers or CRLA staff, shall not provide specific legal advice or assistance to any Workshop attendee during the course of the Workshop. Specific legal advice and assistance may be provided to clinic attendees who are CRLA eligible, at an arranged time which is separate and apart from the Workshop itself. All legal advice and assistance must be documented in the CRLA file and/or in Legal Server. Volunteers must notify the CRLA office to the extent they are providing specific legal advice and assistance to Workshop attendees. Volunteers must arrange to immediately provide to CRLA staff written documentation of specific legal advice and assistance provided to clinic attendees in a manner

that will allow for sufficient documentation of the specific legal advice and assistance to be included in the case file.

Procedure for Closing Files of Workshop Attendees

All files for Workshop attendees shall be reviewed during the normal course of office case review. To the extent a CRLA-eligible Workshop attendee has received specific legal advice and counsel and this is sufficiently documented in the case file, the file may be closed as a case. CRLA-eligible Workshop attendee files in which there is no specific legal advice and counsel documented shall be closed as matters. Non-CRLA-eligible Workshop attendee files shall be rejected as ineligible matters.

EXHIBIT G

**(CRLA Comments In Response
to OCE Draft Report)**



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

January 1, 2012

DONOR NAME
DONOR ADDRESS
DONOR CITY, STATE, ZIP

Dear DONOR:

On behalf of **California Rural Legal Assistance**, I would like to express my sincerest gratitude for your generous donation in the amount of \$XXXX on 3/30/2012. We really appreciate your dedication to our organization and our clients.

Annually, we provide continuous community outreach, educational workshops and legal assistance to more than 48,000 working poor families, immigrants and farm workers. Your support improves lives daily. Thank you on behalf of everyone our organization impacts. For your reference, CRLA's federal TIN number is 95-2428657. If you would like your name to appear in our donor acknowledgement pieces – such as our Annual Report – differently from the above address block or if you have questions about the processing of your donation, please contact Austin Cummings acummings@crla.org or 415-777-2846 x 309.

Adelante hacia la luz,
Forward toward the light.

José R. Padilla
Executive Director

CRLA is funded in part by the Legal Services Corporation (LSC). As a condition of the funding CRLA receives from LSC, it is restricted from engaging in certain activities in all of its legal work – including work supported by other funding sources. CRLA may not expend any funds or any activity prohibited by the Legal Services Corporation ACT, 42 U.S.C. 2996 et seq. or by Public Law 104-134. Public Law 104-134 504(d) requires that notice of these restrictions be given to all funders of programs funded by the Legal Services Corporation. For a copy of these laws or any other information or clarifications, please contact Austin Cummings at 415-777-2846 x 309

EXHIBIT H

(CRLA Comments In Response
to OCE Draft Report)

(Approved by June 23, 2012 Board action as an addendum to the Accounting Manual)

DERIVATIVE INCOME ALLOCATION

POLICY:

Derivative income includes interest, rents, appearance fees, and any other non-grant or donationⁱ income that can be generated from and attributed to the use of certain other assets or grant funds. Income of this type will be allocated to those grant funds, such as Legal Services Corporation (LSC) and The California Endowment, which require that derivative income generated using their grants and assets be retained and added to their respective fund. Derivative income generated from other funds, such as Legal Services Trust Fund Program of the State Bar (LSTFP), that are indifferent or request that derivative income not be commingled with their grant funds will be allocated to Unrestricted funds.

PROCEDURE:

Derivative income that is generated from LSC funds will be allocated and credited to LSC funds. Interest income (typically the most significant source of non-fund specific derivative income) received from general CRLA operating and investment accounts will be allocated using a calculation for each fiscal year that determines the average share of cash balances between LSC and Unrestricted (Unrestricted is normally the Board Reserve balance plus LSTFP advances).ⁱⁱ

ⁱ Based on Supplementary Information to the publication of 45 CFR § 1630 as a final rule, 62 Federal Register 68220, (December 31, 1997), income derived from publications and from fundraising is not considered LSC derivative income.

ⁱⁱ LSC typically advances two months (January and November) of funding, which has been in excess of \$1.1 million from 2009 to 2012, while the LSTFP has been advancing, quarterly, in excess of \$500,000 over the same period. The Board Reserve Fund was reduced from \$1 million to \$721,218 in September 2010.