



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Acadiana Legal Service Corporation
May 5-8, 2008
Case Service Report/Case Management System Review

Recipient No. 619051

I. EXECUTIVE SUMMARY

Finding 1: ALSC'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, there were several instances of inconsistent information in the ACMS and the case files.

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

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

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

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

Finding 6: ALSC is in non-compliance with the retainer requirements of 45 CFR § 1611.9.

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

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

Finding 9: ALSC is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff and PAI case files which contained no description of the legal assistance provided.

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

Finding 11: ALSC is in non-compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as numerous staff case files reviewed are dormant or were untimely closed.

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

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

Finding 14: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: A review of ALSC's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: ALSC is in non-compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, ALSC is not in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: ALSC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 18: ALSC is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

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

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

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

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

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

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

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

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

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

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

II. BACKGROUND OF REVIEW

On May 5 - 8, 2008, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit at Acadiana Legal Service Corporation ("ALSC"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of two LSC attorneys, one LSC consultant, and one LSC fiscal analyst.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that ALSC has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed ALSC for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR 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 ALSC's upper and middle management, staff attorneys and support staff. ALSC's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2006 through March 31, 2008. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 279 case files which included 62 targeted files.

ALSC is an LSC recipient that operates three offices. The main office is located in Lafayette with the branch offices located in Alexandria and Lake Charles. ALSC's executive staff consists of an Executive Director, Executive Assistant, Human Resources Manager, Information Technology Manager, and Records Specialist. ALSC received a grant award from LSC in the amount of \$1,893,533 for 2006 and \$1,988,721 for 2007.

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

For 2006, ALSC reported 4,158 closed cases in its CSR data. ALSC's 2006 self-inspection report indicated a 0% error rate with exceptions noted in 0 files out of 151 reviewed.

ALSC's 2007 self-inspection report indicated a 2% error rate with exceptions noted in 3 files out of the 151 cases reviewed. The problem areas identified were cases which lacked income and asset documentation and written evidence of advice or representation.

By letter dated March 13, 2008, OCE requested that ALSC provide a list of all cases reported to LSC in its 2006 CSR data submission ("closed 2006 cases"), a list of all cases reported in its 2007 CSR data submission ("closed 2007 cases"), a list of all cases closed between January 1, 2008 and March 31, 2008 ("closed 2008 cases"), and a list of all cases which remained open as of March 31, 2008 ("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 ALSC staff and the other for cases handled through ALSC's PAI component. ALSC 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. 9 and 10, and the LSC *Access to Records* (January 5, 2004) protocol. ALSC was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2006, 2007, and 2008 closed cases and open cases, as well as a proportionate distribution of cases from ALSC's office. 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 ALSC agreement of April 10, 2008, ALSC staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.² ALSC's management and staff cooperated fully in the course of the review process. As discussed more fully below, ALSC was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as Managing Attorneys in the branch offices and the Executive Director in the main office.

At the conclusion of the visit on May 8, 2008, OCE conducted an exit conference during which ALSC was made aware of the areas in which a pattern of non-compliance was found. OCE cited instances of non-compliance in the areas of intake, case management, execution of citizenship

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

attestations, execution of retainer agreements, documentation of legal advice, application of closing codes, and allocation of PAI time and PAI oversight. ALSC was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

By letter dated July 24, 2008, LSC issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the May 5-8, 2008 CSR/CMS visit. ALSC was asked to review the DR and provide written comments. By letter dated September 10, 2008, ALSC submitted its comments to the DR. ALSC noted concerns and commented on some of the Required Corrective Actions contained in the DR. LSC has carefully considered ALSC's comments and made such revisions as it deems warranted. ALSC's comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

Finding 1: ALSC'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, there were several instances of inconsistent information in the ACMS and the case files.

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

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

See Case No. 006E-28001782 (ACMS indicated that the case was closed on June 29, 2007, however, the case notes in the file indicate work was done for the client through August 1, 2007); Case No. 06E-2005375 (In the ACMS the case is closed as a PAI case, however, case notes indicate the attorney provided no legal advice to client and therefore should have been not reported, or closed as a staff case if advice was provided by ALSC); Case No. 06E-10000807 (In the ACMS the case is closed as a PAI case, however the case notes in the file indicate the client was only provided advice by ALSC staff); Case Nos. 07E-10004871 and 07E-10006323 (The ACMS indicates that the client's case is non-LSC Eligible, however, the information in the files indicate the clients case is LSC-Eligible); Case No. 06E-28001732 (ACMS indicates the case was a staff case closed on 6/29/2007, however notes in the file indicate work was done on the client's behalf through 8/1/2007); Case No. 06E-2005375 (ACMS indicates the case was a PAI case closed utilizing the closing code "E", however the file indicated that the case was referred to a PAI attorney but the attorney was unable to contact the client).

ALSC must provide additional training to staff and strengthen closed case supervisory review procedures.

In response to the DR, ALSC indicated that it has already begun additional training to staff and plans to continue to emphasize training on the ACMS, especially to insure consistency of information in the ACMS and the hard copy case file.

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

ALSC utilizes two intake models to conduct intake. The Lafayette office recently implemented a Helpline which is telephonic intake, advice and referral hotline. The Alexandria and Lake

Charles offices conduct intake according to substantive unit; Family Law Unit (“FLU”), Litigation Unit (“LU”), and Administrative Law Unit (“ALU”). Intake is conducted each week on a designated day, except emergencies which will be accepted at any time. The screening processes for both models occur in a two step process; eligibility screening conducted by legal secretaries or paralegals; and substantive issue screening and advice by attorneys. In most cases, these steps do not occur on the same day. In Lafayette there is a significant delay in speaking with an attorney.

The Alexandria and Lake Charles offices conduct inconsistent screening of citizenship attestation and eligible alien status for walk-in applicants. Staff interviews revealed that intake staff does not obtain a citizenship attestation from walk-in applicants at the time of intake. The attestation is obtained for walk-in applicants once their case is accepted for extended representation. LSC regulation requires recipients to obtain citizenship in writing prior to a case being accepted and assistance provided, unless the assistance is limited to brief advice and consultation by telephone. *See* 45 CFR § 1626.6(a). In other cases, citizen attestations were executed as part of the retainer agreement; however, the retainer agreement does not contain a line for a date which creates difficulty in demonstrating that the attestation was executed in a timely manner. ALSC has updated their citizen attestation forms and retainer agreements to comply with the CSR Handbook (2008 Ed.), however, case review revealed that the new forms have yet to be utilized in a consistent manner.

The Lake Charles branch office conducts outreach every Thursday. The applicants complete and sign an application and are seen on a first-come first serve basis. The applications are brought back to the office, reviewed, and entered into the ACMS by a legal secretary or paralegal. At this point a conflicts check is performed. The applications are then forwarded to the Managing Attorney who makes the acceptance determination. The written intake form appears to date back to the LSC program that previously served Lake Charles, therefore, is outdated and needs updating. The intake form should mirror the screens of the ACMS to ensure that information is collected in a consistent manner through out the program. Additionally, the program should determine if the collection and maintenance of financial eligibility information of a conflicted applicant is consistent with the Louisiana’s rules of professional responsibility.

In response to the DR, ALSC indicated that it is researching whether or not collection and maintenance of financial eligibility information of a conflicted application is consistent with Louisiana’s Rules of Professional Responsibility. ALSC indicated it will implement a new procedure and outreach form in the Lake Charles area which requires completion of a conflict check before collection of financial and other eligibility information from the applicant.

A review of sample advice and rejection letters from all three offices reveal that all the letters inform clients that the program will be unable to provide legal representation, although, legal advice is provided in some of the letters. Additionally, staff interviews reveal that verbal advice is provided to each client prior to generation of the letter. ALSC indicates that their intent is to inform clients that no additional representation will be extended beyond the advice which was previously provided. Since these cases are being rejected and not reported to LSC the advice in the letters must be removed. LSC considers the advice provided by ALSC to be representation, which contradicts the rejection language in the letters sent to the clients.

In response to the DR, ALSC indicated it is taking steps to remove language which provides legal advice in letters which reject the application for legal services.

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

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

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

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient “clients” and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2001 Ed.), ¶ 4.3(a) and CSR Handbook (2008 Ed.), § 4.3.

ALSC’s revised Income Guidelines were adopted by its Board on February 21, 2006. ALSC Eligibility Standards and Guidelines are programmed into the program’s ACMS. ALSC’s Eligibility Standards indicate that financial eligibility will be determined pursuant to the income guidelines most recently promulgated by LSC.

Interviews with staff indicate that the office maintains a grant with the Road Home Project which allows the program to provide advice and counsel to seniors and victims of the hurricanes in home title issues whose income exceeds 125% of the FPG. In addition, certain offices receive Area Agency on Aging funds which do not require eligibility screening, though staff will obtain

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

the information if the applicant does not object. If the client's income exceeds the income guidelines without exceptions, or if a senior client's financial eligibility is not screened, staff is instructed not to designate the case as "LSC Eligible" or "LSC Reportable".

All sampled cases reviewed evidenced that the applicants were screened for income eligibility. However, sampled case files evidenced two cases in which the applicant's income exceeded 125% of the FPG and the file did not contain any documentation of authorized exceptions pursuant to the ALSC's over-income authorized exception policy. *See* Case Nos. 06E28003490 and 07E-10006301 (Clients' incomes are over 125% of the FPG however the files contain no documentation of ALSC's consideration of any of the authorized exceptions).

ALSC's group eligibility policy complies with the requirements of 45 CFR Part 1611. Interviews revealed that ALSC has provided legal assistance to groups but no staff could recall serving a group client in the previous five years.

ALSC's Eligibility Standards do not, however, include a provision for the screening of a client's prospective income. Interviews reveal that prospective income is not screened unless an applicant's income is between 125% and 200% of the FPG and the screener is assessing their current income prospects pursuant to 45 CFR § 1611.5(a)(4)(i).

ALSC's Eligibility Standards provide that an applicant whose income is solely derived from government benefits for low-income persons is financially eligible for legal assistance without an independent determination. The policy states that this applies, for example, to "TANF, General Relief, etc." It is unclear whether the Board intends for additional benefit programs to fall under this exemption.

Sampled cases evidenced that ALSC is in substantial compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG.

In response to the DR, ALSC indicated it is analyzing the regulatory requirement that staff screen for prospective income with a view toward required inquiries during the application process.

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

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

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

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.

The Eligibility Standards approved by the ALSC Board of Directors on February 21, 2006 establishes the liquid asset ceiling at \$5,000 and the non-liquid asset ceiling at \$10,000. Exempt from consideration is the applicant's principle residence; vehicles used by the applicant or household members for transportation; assets used in producing income and other assets which are exempt from attachment under State or Federal law. Assets exempt from attachments are listed and include: clothing, bedding, linen, chinaware, non-sterling silverware, glassware, living room, bedroom and dining room furniture, cooking stove, heating and cooling equipment, one noncommercial swing machine, equipment required for therapy, kitchen utensils, pressing irons, washers, dryers, refrigerators, deep freezers; family portraits; arms and military accoutrements; musical instruments played or practiced on the by the applicant or a member of his family; all poultry, fowl and one cow kept by the applicant for the use of his family; all dogs, cats and other household pets; up to \$5,000 in value in any wedding or engagement rings worn by either spouse; and all payments and proceeds of pensions, tax-deferred arrangements (such as Individual Retirement Accounts), and annuity contracts. The policy also states that when determining whether or not an asset is available to an applicant, staff shall consider whether a perpetrator of domestic violence holds ownership or co-ownership of the asset and an applicant 18 and over is residing with others and has no legal right to the assets in question. The policy later clarifies that income and assets of an alleged perpetrator of domestic violence, or assets jointly held with an alleged perpetrator, shall not be included when determining financial eligibility.

Sampled case files reviewed revealed that ALSC maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4.⁵ There were two exceptions identified in the file review. *See* Case Nos. 07E-40000406 and 07E-10003317 (The clients' assets are over the recipient's applicable asset ceiling and there is no evidence of a waiver in the files).

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

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

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

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

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

To comply with the updated CSR Handbook (2008 Ed.), ALSC implemented a new attestation form. The new form has three sections, an attestation to citizenship, an attestation of eligible alien, and if not an eligible alien the VAWA or trafficking exception. The form states that supporting documentation must be provided and attached to the form if the applicant is an eligible alien. Intake interviews revealed that intake staff is aware that an attestation of eligible alien status is not sufficient but that documentation is required. Although this new form was created to comply with the current CSR Handbook, case review indicates that it is not being consistently utilized in the 2008 cases.

ALSC's previous citizen attestation, which continues to be utilized, is contained within the program's retainer agreement. There is not a separate signature block tied only to the citizen attestation and the document does not contain a date line as required by CSR Handbook (2008 Ed.), § 5.5. The language in the retainer agreement states, "I hereby attest that I am a United

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

States citizen and that the information provided about my income and assets is true.” ALSC indicated that they did not have a separate retainer agreement for eligible aliens, however, if an applicant indicated they were an eligible alien, ALSC’s protocol was to black out the citizenship language from the retainer agreement. OCE requested to view a sample case; however the case reviewed did not have the citizenship language blacked out.

ALSC is in non-compliance with 45 CFR § 1626.6, as there were 19 case files that were not in compliance.⁷ Non-compliant cases were identified in every year of the review period; no pattern of improvement or decline in compliance patterns was noted. *See* Case Nos. 07E-10003562, 06E-10001415, 07E-10003562, 06E-10005542, 07E-28001192, 08-A100320, 07E-10001042, 06E-10004098, 05E-10001510, 07E-28000326, 07E-28004819, 06E-28004070, 07E-28001653, 07E-28004819, 05E-23006172, 5E-23005656, 06-2800434, 08E-A400529, and 08E-A100171. These case files, and those similar to them, are not CSR reportable and cannot be charged to the LSC fund.

As stated above, interviews reveal that the branch offices do not obtain citizenship attestations for walk-in applicants at the time of intake. The attestation is obtained for walk-in applicants once their case is accepted for extended representation. LSC regulation requires recipients to obtain citizenship in writing prior to a case being accepted and assistance provided, unless the assistance is limited to brief advice and consultation by telephone.

ALSC’s non-compliance appears to be due to the staff’s misunderstanding that attestations are not required for non-LSC funded cases. Additionally, even for walk-in applicants, there is an implication by staff that the attestation is only required in extended representation cases due to the citizen attestation being contained within the body of the retainer agreement.

ALSC must ensure that all case files, LSC funded and non-LSC funded, contain citizenship attestations for cases in which program staff has in-person contact with the client or the program provides continuous representation beyond Counsel and Advice or Limited Action. *See* CSR Handbook (2008 Ed.), § 5.5. ALSC must utilize, in all cases, their most current citizen attestation and remove from circulation the previous retainer agreement that contained the citizen attestation. ALSC must provide additional training to staff and strengthen closed case supervisory review procedures. ALSC is admonished that Part 1626 is regarded as a substantive regulatory requirement and continued noncompliance could result in the imposition of a sanction.

In response to the DR, ALSC indicated that it has begun providing training to staff and will continue to emphasize compliance with the provision of § 1626 in future trainings with a view of insuring that all case files, LSC funded and non-LSC funded, contain citizen attestations for cases in which ALSC staff has in-person contact with the client or in which ALSC provides continuous representation beyond counsel and advice or limited action. ALSC indicated that it has already taken steps to remove from circulation the previous retainer agreement that contained the citizen attestation, and has distributed the most current citizen attestation for appropriate use to all offices of ALSC. Additionally, according to ALSC, it has already provided several staff

⁷ A majority of the cases lacking citizen attestations were located in the Lake Charles and Lafayette offices.

training events to strengthen closed case supervisory review procedures and will continue to emphasize same in the future.

Finding 6: ALSC is in non-compliance with the retainer requirements of 45 CFR § 1611.9.

Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services from the recipient. The retainer agreement must be in a form consistent with the applicable rules of professional responsibility and prevailing practices in the recipient's service area and shall include, at a minimum, a statement identifying the legal 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.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

ALSC is in non-compliance with the requirements of 45 CFR § 1611.9. While all sampled files contained a retainer agreement when required, the retainer agreement does not have a line for a date which makes it difficult for the program to demonstrate that the agreements were executed in a timely manner; this omission affects a significant number of cases. The date of signature can be inferred from the signature date on accompanying documents, but this is not definitive evidence. As stated above, ALSC has updated its retainer agreements to include a line for the date, however, the new retainer agreements are not being utilized for all cases.

ALSC must remove from circulation the version of the retainer agreement that does not contain a line for the date and begin using the updated version.

In response to the DR, ALSC indicated that although some retainer agreements reviewed by the on-site team did not have date lines, the dates were available on other versions of the retainer agreement. According to ALSC all prior versions of the retainer agreement have been required to be destroyed and a new retainer agreement with a date line is in circulation. According to ALSC, most cases in which a retainer agreement without a date line was utilized, case notes indicated the time frame in which the retainer agreement was signed, allowing demonstration that the agreements were executed in a timely manner.

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

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the

⁸ 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.

regulations require that recipients prepare a dated, written statement signed by each plaintiff it represents, enumerating the particular facts supporting the complaint. *See* 45 CFR §§ 1636.2(a) (1) and (2).

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

Case files reviewed indicated that ALSC is in compliance with the requirements of 45 CFR Part 1636.

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

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

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

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

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

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

Finding 9: ALSC is not in compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were several staff case files which contained no description of the legal assistance provided.

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

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the

only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

ALSC is in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as there were 23 case files reviewed which contained no description of the legal assistance provided. *See* Case Nos. 07E-28005254, 06E-2002343, 07E-2800265, 07E-23005462, 06E-28005247, 06E-28000426, 6E-28003573, 06E-20005375, 07E-40006186, 08-A100320, 06E-10003870, 06E-40001202, 07E-10003562, 06E-10001415, 08E-A280793, 07E-28005916, 08E-A281327, 03E-28001251, 07E-40003131, 07E-4003116, 06E-400000054, 07E-40002403, and 07E-10003317. These files, and others like them, are not CSR reportable.

Several of these cases are closed PAI cases in which the client never received advice from the PAI attorney. Staff interviews reveal that ALSC's protocol is to provide advice by staff prior to the referral; however, the advice was not documented in the case files. In these instances the advice should be recorded in the file and reported as a staff case.

ALSC must ensure that the legal assistance provided is documented in all case files and that the 2008 case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, ALSC must provide additional training to staff and strengthen closed case supervisory review procedures.

In response to the DR, ALSC indicated it has already instituted several staff training events in which focused on the need to document the legal assistance provided in all case files and will continue to emphasize this in staff training in order to strengthen closed case supervisory procedures. According to ALSC, it has taken steps to insure that the case files identified in this Finding are not improperly reported to LSC in future CSR data submissions.

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

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

The files reviewed demonstrated that ALSC's application of the CSR case closing categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 31 instances of case closing code errors.

The following are examples of cases with closing code errors. *See* closed 2008 Case Nos. 08E-A231457 and 06E-28000657 (These are rejected cases that were closed utilizing the closing code “K” or “other”); Case No. 06E-28000426 (closed with a closing code of “C” or “case referred after legal assessment”, however, case was never referred and no legal advice was provided to the client); Case Nos. 06E-28003573, 06E-2005375, and 05E-28005177 (These are PAI cases that were closed utilizing the closing code “E” or “client withdrew”. In two of the cases the attorney did not provide legal advice to the client. In one case the attorney assisted the client in completing Pro Se divorce paperwork and advised the client to contact him if more assistance was necessary. The client never returned.); Case No. 06E-10004098 (a case closed with “Counsel and Advice” while the appropriate work reflected the use of the closing code “Brief Services”); Case No. 06E-10001889 (a case closed utilizing the closing code “Counsel and Advice”, however the appropriate code is “Limited Action”); Case No. 05E-40005732 (a case closed utilizing the closing code “Other”, however, the appropriate code is “Brief Services” or possibly “Limited Action” if additional information could be obtained from the PAI attorney); Case No. 05E-40002675 (a case closed utilizing the closing code “Other”, however the appropriate closing code is “X”, since the case was rejected); Case No. 07E-10003433 (a case closed utilizing the closing code “L”, Extensive Service, however the appropriate closing code is “A” or B” since limited action was done on the client’s behalf); Case No. 07E-10004993 (a case closed utilizing the closing code “Court Decision”, however the appropriate closing code is “I (a)”, uncontested court decision.); and Case No. 06E-10005542 (a case closed utilizing the closing code “Court Decision”, however, the appropriate code is “Brief Services”).

According to the Executive Director, ALSC transitioned to a state-wide Prime ACMS in January 2008. This system included two additional case closing codes, “X” and “R”. Until that time, rejected cases were closed utilizing the “Other” code. Case review revealed some 2008 cases that were documented by ALSC as LSC-ineligible; however the program continued to utilize the “Other” closing code. Following discussions with ALSC staff, they changed all 2008 rejected cases that were utilizing the closing code “Other” to a “X” or “R” closing code.

Although there were not consistent problems with one particular closing code, ALSC must take action to ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1. As part of this corrective action, ALSC must draft protocols for the use of such codes, and include them in program policies and the staff training.

In response to the DR, ALSC indicated it has already begun additional training to staff on the use of proper closing code categories to comply with applicable CSR Handbook, as well as drafting protocols for the use of such codes and including them in policies and staff training.

Finding 11: ALSC in non-compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as numerous staff case files were dormant and untimely closed.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referral after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁹ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

ALSC is not compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). There was one case reviewed that was not closed in a timely manner and 14 cases that appear dormant. PAI dormancy is a consistent problem throughout the program. Non-compliant cases were identified in every year of the review period; no pattern of improvement or decline in compliance patterns was noted.

The following case files, and those similar to them, should not be reported to LSC in ALSC's CSR data submission and should be closed administratively. Examples include: Case No. 05E-40002675 (a case opened 6/1/05 and closed 2/6/08; notes in the file reflect that the private attorney had no contact with the client after the initial visit in 2005); Case No. 07E-40002789 (a case opened 6/25/07 and referred to the sub-grantee 6/28/07; ALSC was advised in August of 2007 that the case was assigned to an attorney but despite status requests, no information has since been reported to the program); Case No. 07E-40004254 (a case opened 9/11/07 referred to the sub-grantee and placed with an attorney 10/2/07 but despite status requests no information has since been reported to the program); Case No. 07E-40003957 (a case opened 8/23/07 referred to the sub-grantee and placed with an attorney 10/9/07 but despite status requests no information has since been reported to the program); Case No. 03E-10000261 (a case opened 1/21/03 and referred to the sub-grantee but no information has been provided, including whether the case was placed with a private attorney; the program has requested that the sub-grantee return the case file but at the time of the review the file has yet to be returned); Case No. 03E-10002632 (a case opened 5/30/03, referred to the sub-grantee and placed with an attorney;

⁹ The time limitation of the 2001 Handbook that a brief service case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

despite status requests, the program has not received information since January 2006); Case No. 01E-23000168 (a case that was opened on April 18, 2001 and remains open. The case notes indicate that all activity ceased in the year 2006 with no recent legal activity and no documentation in the file regarding future legal assistance pending or needed); Case No. 02E-49002395 (a case that was opened on April, 24, 2002, and remains open, however notes in file indicate that the case should have been closed on May 8, 2002. All activity ceased in this case file in the year 2002 with no recent legal activity and no documentation in the file regarding future legal assistance pending or needed); Case No. 07E-28000964 (a case that was opened on March 15, 2007 and remains open. Attorney spoke to client on 4/23/2007 who indicated she did not want legal assistance. There has been no recent legal activity and no documentation in the file regarding future legal assistance pending or needed); Case No. 02E-28005255 (a case which was opened on October 31, 2002 and remains open. All activity ceased in this case file in the year 2005 with no recent legal activity and no documentation in the file regarding future legal assistance pending or needed); Case No. 00E-49000351 (case which was opened November 6, 2000 and remains open. All activity ceased in this case file in the year 2007 with no recent legal or documented activity in the file regarding future legal assistance pending or needed); and Case No. 02E-23003623 (This case was opened on June 26, 2002. All activity ceased in this case file in the year 2002 and there is no recent legal or documented activity in the file regarding future legal assistance pending or needed);

ALSC should take corrective action and review all open cases to identify those that cannot be timely closed. Those cases identified as dormant should be closed in such a manner that they and not reported to LSC in the CSR submission.

ALSC must ensure that case files are not dormant by providing effective follow-up and oversight. This corrective action item is tied to the programs lack of compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. *See* Finding 16.

In response to the DR, ALSC indicated it is taking action to review all open case files to identify those that cannot be timely closed and therefore not reported to LSC in the CSR submission. Furthermore, according to ALSC, it is taking steps to insure that case files do not become dormant and will provide effective follow-up and oversight.

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

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

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

level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.2 and CSR Handbook (2008 Ed.), § 6.2.

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

ALSC is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases as there were no duplicate case files noted in the review sample.

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

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

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

Sampled files reviewed, and interviews with staff indicate, that ALSC is not involved in such activity. Discussions with the Executive Director also confirmed that ALSC is not involved in these prohibited activities.

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

Finding 14: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service or two private attorneys¹⁰; neither the referral service nor two

¹⁰ *See* 45 CFR § 1609.3(a)(1).

private attorneys will consider the case without payment of a consultation fee¹¹; the client is seeking Social Security or Supplemental Security Income benefits¹²; 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 fee¹³; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile¹⁴, emergency circumstances compel immediate action¹⁵, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely.¹⁶ 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).

The case review revealed that ALSC provided legal assistance with respect to fee-generating cases and did not have the specific recordkeeping and forms required for these cases. Additionally, Helpline staff, an eligibility screener and attorney stated they are permitted to provide advice on fee-generating cases to eligible clients. LSC was provided an email sent to the Executive Director by the attorney interviewed in which he informs the Executive Director about the conversation he had with LSC staff regarding fee-generating cases. In the email, the attorney indicated that he misspoke when he stated to LSC staff that he gave advice in fee-generating cases. He further explained that he never provided advice in a fee-generating case, as defined by the regulation, though his email only recites a portion of the regulatory definition of a fee-generating case. The attorney also detailed a defamation case to support his argument that the advice given was not provided in a fee-generating case, however, the advice appears to be prohibited by LSC regulations. As a result of the case review, interviews, and email, ALSC was asked to print a list of the closed 2007 cases with the problem code 94 (tort). Seven cases were randomly selected and two were targeted from the list. Four of the cases reviewed were fee-generating cases and did not have the specific recordkeeping and forms required for fee-generating cases and therefore did not meet the requirements of 45 CFR §§ 1609.3(a) and 1609.3(b).

See Case No. 07E-10002715 (Client was advised of their rights, burden of proof, and statute of limitation in a tort case regarding injuries client received in a nursing home); Case No. 07E-10000189 (This case was closed as a "G". The attorney filed a petition for damages caused as a result of a fire. The program could not locate the required waiver); Case No. 07E-28001605 (Client was advised of right and statute of limitation in filing a malpractice suite); and *see also* Case No. 07E-28005710 (Client was advised of rights, burden of proof, and statute of limitation in unemployment discrimination case).

¹¹ See 45 CFR § 1609.3(a)(2).

¹² See 45 CFR § 1609.3(b)(1).

¹³ See 45 CFR § 1609.3(b)(2).

¹⁴ See 45 CFR § 1609.3(b)(3)(i).

¹⁵ See 45 CFR § 1609.3(b)(3)(ii).

¹⁶ See 45 CFR § 1609.3(b)(3)(iii).

Staff interviews and case review indicate that the necessary steps that would permit ALSC to provide representation in these cases are not being taken. ALSC must stop providing advice in fee-generating cases unless the proper and necessary steps are taken under the regulation 45 CFR § 1609.3.

In response to the DR, ALSC maintains that the LSC regulations do not define “case” with respect to the “fee-generating cases” portion of the regulation. LSC respectfully disagrees. As ALSC notes in its response, 45 CFR § 1600.1 and 45 CFR § 1609.2 both define a “fee-generating case” as “**any case or matter** which if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party.” (Emphasis added). Accordingly, the definition of what is a fee-generating case is broad and includes cases and matters.

ALSC also indicated that ethical considerations would require staff to advise an applicant of filing deadlines. ALSC further states:

Advising the client that she has a right to sue and the date on which that right will expire is specific to the client's unique circumstances and involves a legal analysis that is tailored to the client's factual situation. It also requires applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented. As such, it clearly constitutes "legal assistance" under the provisions of Section 2.2 of the CSR Handbook. Advising the caller of her rights and the relevant prescriptive date also furthers both stated purposes of 45 CFR § 1609.

LSC recommends that ALSC consider the full provision of Section 2.2 of the CSR Handbook. If it appears that there is a conflict in regulations and instructions issued by LSC, we suggest re-reading them in such a way which produces consistency and harmony. The concluding line of CSR Handbook § 2.2 provides, “The provision of legal assistance creates an attorney-client relationship.” Accordingly, if an applicant for legal assistance who has a fee-generating case is advised of the specific deadline and then sent on their way, no case has been created and there is no conflict with Part 1609.

If ALSC provides legal assistance, at any level, in a fee-generating case, as defined by 45 CFR § 1609.2, it must also ensure that it complies with the exceptions which allow it to undertake representation; additionally, it must comply with the record keeping requirements.¹⁷ On the other hand, if ALSC determines it can not provide representation to an applicant in a fee-generating case, it can and should provide guidance on meeting deadlines in accordance with its ethical duties imposed by state law.

Finding 15: A review of ALSC’s accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

¹⁷ We would also recommend reviewing Office of Legal Affairs ("OLA") External Opinion 99-08, which may be found on-line at <http://www.lsc.gov/laws/EX-1999-08.php>. As noted by Ex.Op. 99-08, the fact that a fee-generating case falls within an exception allowing representation without first going through the threshold qualifying (such as the rejection by two private attorneys) does not relieve the program of the duty to maintain the appropriate recordkeeping for this case.

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

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

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

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

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

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

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

While there is no *per se* bar against shared personnel, generally speaking, the more shared staff, or the greater their responsibilities, the greater the likelihood that program integrity will be compromised. Recipients are instructed to develop systems to ensure that no staff person

engages in restricted activities while on duty for the recipient, or identifies the recipient with any restricted activity. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

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

Finding 16: ALSC is in non-compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, ALSC is not in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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

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

ALSC's PAI plan provides for two components to involve private attorneys in the delivery of legal assistance to eligible clients, private contracts and pro bono referral systems. The Plan is not dated and accordingly it cannot be determined if it is current or needs to be updated. Further, the Plan does not comply with 45 CFR § 1614.4(b). The plan states, "The ALSC PAI Plan is annually submitted to each Bar Association in the service area and comments on same are solicited from the Bar associations." The results of the submissions are not summarized in the Plan.

In response to the DR, ALSC indicated that its most recent private attorney involvement plan is an accurate reflection of their PAI approach to legal services to the poor in the service area and it has been submitted to each bar in the area. According to ALSC, there are no comments in the plan because none were submitted; however future comments will be included in the plan.

Lafayette

ALSC maintains a sub-grant agreement with the Lafayette Parish Bar Foundation in the amount of \$20,400 for 2008, for recruitment, referral, and follow-up of cases. The cases enter the program through the regular intake process. Senior Attorneys in the three substantive units within the office identify the cases that are appropriate for referral. Once all the proper documentation is obtained from the client by ALSC, the records specialist refers the case to the sub-grantee. The Records Specialist is also the individual who monitors the cases on the ACMS, sends electronic status requests and closes the cases when work is completed. She indicated that she does not use status letters or other follow-up forms.

In furthering their PAI efforts, ALSC contracts with private attorneys. From January 1, 2006 through March 31, 2008, ALSC worked with no more than five attorneys. One of the contracted attorneys has a designated office within ALSC's Lafayette office and handles a majority of the cases. For example, in 2006 the contract attorney was compensated \$41,502 (1,671.50 hours @ \$24.72 an hour) and in 2007 he earned \$42,546.36 (1438 hours @ \$24.72 to \$55.00 an hour), all of which was paid from non-LSC funds. Additionally the contract attorney received benefits which included dental and workers compensation insurance. The contracting documents did not indicate whether these benefits were paid with LSC funds. In response to the DR, ALSC was directed to clarify whether these benefits were provided through LSC or non-LSC funds. The attorney indicated that he has a successful private practice where he earns more than half of his professional income. In response to the DR, ALSC was also directed to indicate how they determined that more than half of the contract attorney's income is derived from his private practice.

In response to the DR, ALSC indicated that the contract attorney's benefits were paid with LSC funds; that is, dental in the amount of \$311.52, and workers compensation insurance in the amount of \$190.62, for a total of \$502.14.

In response to the DR, ALSC indicated it relies on the attorney certification that the amount of compensation received from ALSC during a calendar year is equivalent to less than one-half (1/2) of their professional income.

Alexandria

ALSC maintains a sub-grant with the Central Louisiana Pro Bono Project in the amount of \$12,689 for 2008, for recruitment, referral, and follow-up. The office refers cases which normally would be handled by attorneys in the Family Law and Litigation Units. These cases enter the program through the regular intake process. Senior Attorneys in the Family Law and Litigation Units identify the cases that are appropriate for referral. Once a case is designated for referral, the senior paralegal sends an acceptance letter, retainer/attestation, and other documents to the client. Once these documents are returned, the paralegal refers the case to the sub-grantee. The senior paralegal monitors the cases on the ACMS and sends quarterly status update letters to the sub-grantee requesting the status of open cases. The paralegal indicated that there is extreme difficulty in obtaining status information in these cases which makes oversight a problem.

Additionally, ALSC uses contract attorneys on the Road/Home Project which is funded with non-LSC funds.

Lake Charles

The Lake Charles office operates its own pro bono referral program. The senior paralegal is responsible for referral and oversight of the pro bono cases. Any eligible client's case can be referred to a private attorney. Once a case is accepted the client is sent an acceptance letter, Disclaimer of Limited Representation Form, Retainer Agreement, Citizenship Attestation and other documents to the client. Upon return of the documents the paralegal attempts to place the client's case with a private attorney. Once placed, the private attorney is sent a letter with accompanying documents signed by the client. Protocol within the office is to have the paralegal call the private attorney if the case is not concluded in 6-8 weeks. She does not use a form, only notes are entered into the ACMS. The private attorney is required to return a complete file, with all pleadings and final orders, which is reviewed by the Managing Attorney.

Additionally, ALSC uses contract attorneys on the Road/Home Project which is funded with non-LSC funds.

Interviews and case review reveals that ALSC is in non-compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. As stated previously, there were numerous PAI case files reviewed that were dormant and that did not contain a description of the legal assistance provided. The procedures and mechanisms used to conduct follow-up and oversight of cases referred to the sub-grantees are not uniform, which reduces the chances for consistent and compliant follow-up. Also, as stated previously, ALSC has entered into a LSC-approved sub-grant agreement with two entities to provide recruitment, referral and follow-up services. ALSC closed and reported 175 cases by the two sub-grantees in the 2007 PAI CSR which is significantly less than the 340 maximum number permitted under the sub-grant agreement raising questions regarding the efficiency of services provided by the sub-grantees.

In response to the DR, ALSC offered no comments with respect to this issue.

The review of the audited financial statement ("AFS") for the fiscal year-ending ("FYE") December 31, 2006 and staff interviews reveal that ALSC is inflating the indirect PAI percentage by incorrectly dividing the PAI salaries by the gross case handlers' salaries. Additionally this percentage does not include paid holidays, sick leave, annual leave, and other time off which would change the overall percentage. To correct this problem, ALSC must divide the PAI salaries from the program's total salaries (including paid holidays, sick leave, annual leave, and other time off) to determine the accurate percentage of LSC funds that are devoted to PAI.

In response to the DR, ALSC disagreed with LSC's finding with regards to determining the allocation of PAI spending. LSC management reviewed this issue. LSC reaffirms its position that in order to determine the accurate percentage of LSC funds that are devoted to PAI, ALSC must divide the PAI salaries from the program's total salaries (including paid holidays, sick

leave, annual leave, and other time off). This cost allocation is based upon the costs principles established by OMB Circular A-122 Cost Principles for Non-Profit Organizations.

ALSC must ensure that all cases referred to pro bono attorneys and PAI attorneys include effective oversight and follow-up subsequent to referral in an effort to ensure compliance with the requirements of 45 CFR § 1614.3(d)(3). Further, ALSC must update its PAI Plan, submit it to each Bar in the service area for comments and include a summary of the comments in the Plan. ALSC and its sub-grantees must assess the issues relating to referral and oversight and implement measures to improve the efficiency of this PAI component. Lastly, ALSC should revise its procedures and mechanisms for follow-up and oversight to ensure consistency.

Finding 17: ALSC is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC regulation 45 CFR § 1627.4(a) requires that:

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

The review of accounting records and detailed general ledger for the calendar year ending 2006 through March 31, 2008 disclosed that ALSC is in compliance with 45 CFR § 1627.4(a).

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

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

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or

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

The review of 6 advocates timekeeping records (selected from all of the ALSC offices) for the pay periods of January 1, 2006 through March 31, 2008 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c).

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

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

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

None of the sampled files reviewed contained an award for attorney fees. Discussions with the Executive Director and fiscal review also confirmed that ALSC is not involved in this prohibited activity.

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

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

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

governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

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

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

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

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

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

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

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁸ None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that ALSC is not involved in this prohibited activity.

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

¹⁸ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁹ This restriction has been contained in all subsequent appropriations acts.²⁰ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director also confirmed that ALSC is not involved in this prohibited activity. In response to the DR, ALSC offered no comments with respect to this Finding.

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

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

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

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

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

Section 1007(b) (8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs

¹⁹ *See* Section 504(a)(18).

²⁰ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

or moral convictions of such individual or institution. Additionally, Public Law 104-134, Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

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

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

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

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

IV. RECOMMENDATIONS²¹

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

1. Develop a program-wide written intake form to be used for outreach. It should mirror the screens of the ACMS to ensure that complete information is collected in a consistent manner, and facilitate data entry;

In response to the DR, ALSC indicated that they accept the recommendation and will implement the necessary changes.

2. Review the Lake Charles office's conflict check procedures for outreach applicants and determine if the collection and maintenance of financial eligibility information of a conflicted applicant is consistent with the Louisiana's rules of professional responsibility;

In response to the DR, ALSC indicated that they accept the recommendation and will implement the necessary changes.

3. Review its Eligibility Standards to determine if there are additional benefits programs that should be included in the government benefit exclusion; and

In response to the DR, ALSC indicated that they accept the recommendation and will implement the necessary changes.

4. Ensure that the correct case file information is entered and recoded in the automated case management system.

In response to the DR, ALSC indicated that they accept the recommendation and will implement the necessary changes.

²¹ Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

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

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that Helpline language, both verbal and in advice letters, do not state that representation cannot be provided, when the decision has been made to provide advice;

In response to the DR, ALSC indicated it is taking steps to remove language which provides legal advice in letters which reject the application for legal services.

2. ALSC must remove from circulation all versions of the retainer agreement that contained the citizen attestation and that do not contain a line for the date and begin using the programs recently updated version to comply with 45 CFR § 1611.9;

According to ALSC, all prior versions of the retainer agreement have been required to be destroyed and a new retainer agreement with a date line is in circulation.

3. Ensure that all case files contain citizenship attestations pursuant to 45 CFR Part 1626 where appropriate. As part of this corrective action ALSC must remind staff that citizen attestations must be obtained from all walk-in and outreach clinic applicants no matter the level of service provided by ALSC;

In response to the DR, ALSC indicated that it has begun providing training to staff on a number of occasions and will continue to emphasize compliance with the provision of § 1626 in future trainings with a view of insuring that all case files, LSC funded and non-LSC funded, contain citizen attestations for cases in which ALSC staff has in-person contact with the client or in which ALSC provides continuous representation beyond counsel and advice or limited action.

4. Ensure that the legal assistance provided is documented in the PAI case files and that the 2008 case files identified in this report lacking documented legal assistance are not reported to LSC in the CSR data submission. As part of this corrective action, ALSC must provide additional training to staff and strengthen closed case supervisory review procedures. This corrective action item is tied to the programs lack of compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases;

In response to the DR, ALSC indicated it has already instituted several staff training events which focused on the need to document the legal assistance provided in all case files and will continue to emphasize this in staff training in

order to strengthen closed case supervisory procedures. According to ALSC, it has taken steps to insure that the case files identified in this finding are not improperly reported to LSC in future CSR data submissions.

5. Ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2001 Ed.), ¶ 6.1 and CSR Handbook (2008 Ed.), § 6.1. As part of this corrective action, ALSC must draft protocols for the use of such codes, and include them in program policies and the staff training;

In response to the DR, ALSC indicated it has already begun additional training to staff on the use of proper closing code categories to comply with applicable CSR Handbook, as well as drafting protocols for the use of such codes and include them in policies and staff training.

6. Ensure that case files are not dormant by providing effective follow-up and oversight. This corrective action item is tied to the programs lack of compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases;

In response to the DR, ALSC indicated it is taking action to review all open case files to identify those that cannot be timely closed and not reported to LSC in the CSR submission. Furthermore, according to ALSC it is taking steps to insure that case files do not become dormant and will provide effective follow-up and oversight.

7. Cease providing advice in fee-generating cases, As part of this corrective action, ALSC should review and revise its pre-programmed form letters to ensure that they comply with 45 CFR Part 1609;

In response to the DR, ALSC disagreed with LSC's finding. After careful consideration of ALSC, comments, LSC has determined that revisions to this Finding are unwarranted. If ALSC provides legal assistance, at any level, in a fee-generating case, as defined by 45 CFR § 1609.2, it must also ensure that it has complied with the exceptions which allow it to undertake representation; additionally, it must comply with the record keeping requirements. On the other hand, if ALSC determines it can not provide representation to an applicant in a fee-generating case, it can and should provide guidance on meeting deadlines in accordance with its ethical duties imposed by state law.

8. ALSC must divide the PAI salaries from the programs total salaries (including paid holidays, sick leave, annual leave, and other time off) to determine the accurate percentage of LSC funds that are devoted to PAI;

In response to the DR, ALSC disagreed with LSC's finding with regards to determining the allocation of PAI spending. LSC has reviewed this issue and has determined ALSC must change the way it determines PAI allocation.

9. Ensure that all cases that are referred to *pro bono* attorneys and PAI attorneys include effective oversight and follow-up subsequent to referral in an effort to ensure compliance with the requirements of 45 CFR § 1614.3(d)(3);

In response to the DR, ALSC offered no comments with respect to this corrective action.

10. Update its PAI Plan, submit it to each Bar in the service area for comments and include a summary of the comments in the Plan;

In response to the DR, ALSC indicates that its most recent private attorney involvement plan is an accurate reflection of their PAI approach to legal services to the poor in the service area and it has been submitted to each bar in the area. According to ALSC, there are no comments in the plan because none were submitted; however future comments will be included in the plan.

11. The sub-grantee must assess the issues relating to referral and oversight and implement measures to improve the efficiency of this PAI component;

In response to the DR, ALSC offered no comments with respect to this corrective action.

12. Change the language in its Guide for Helpline Staff which implies that citizenship attestations are not required for non-LSC cases; and

In response to the DR, ALSC offered no comments with respect to this corrective action.

13. Revise its PAI follow-up and oversight procedures and mechanisms to ensure consistency.

In response to the DR, ALSC offered no comments with respect to this corrective action.