



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Southwest Virginia Legal Aid Society, Inc.

November 11-13, 2008

Case Service Report/Case Management System Review

Recipient No. 447020

I. EXECUTIVE SUMMARY

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

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

Finding 3: SVLAS 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: SVLAS 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: SVLAS is in compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

Finding 7: SVLAS 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: SVLAS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There was one case file reviewed which contained no description of the legal assistance provided.

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

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

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

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

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

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

Finding 16: SVLAS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, SVLAS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

Finding 17: SVLAS 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: SVLAS 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 November 11-13, 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 Southwest Virginia Legal Aid Society, Inc. ("SVLAS"). 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 three 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 SVLAS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed SVLAS 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 Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of SVLAS' upper and middle management, staff attorneys and support staff. SVLAS' 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 September 30, 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 257 case files which included 52 targeted files.

SVLAS is an LSC recipient that operates three offices. The main office is located in Marion with the branch offices located in Christiansburg and Castlewood, which is also the location of the program's Intake Unit. SVLAS' executive staff consists of an Executive Director, Deputy Director, and Director of Development. SVLAS received a grant award from LSC in the amount of \$769,833 for 2006; \$893,182 for 2007; and a basic field grant of \$795,045 for 2008.

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, SVLAS reported 4,376 closed cases in its CSR data. SVLAS' 2006 self-inspection report indicated a 6% error rate with exceptions noted in 9 files out of 155 reviewed. The problem areas identified were cases in which citizenship/alien eligibility was not documented and cases in which there was not written evidence of advice or representation.

SVLAS' 2007 self-inspection report indicated a 6% error rate with exceptions noted in 9 files out of the 152 cases reviewed. The problem areas identified were case closures were not timely and cases in which there was not written evidence of advice or representation.

By letter dated September 12, 2008, OCE requested that SVLAS 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 September 30, 2008 ("closed 2008 cases"), and a list of all cases which remained open as of September 30, 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 SVLAS staff and the other for cases handled through SVLAS' PAI component. SVLAS 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. SVLAS 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 each SVLAS' 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 SVLAS agreement of October 7, 2008, SVLAS 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 SVLAS' management and staff cooperated fully in the course of the review process. As discussed more fully below, SVLAS 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.

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.

At the conclusion of the visit on November 13, 2008, OCE conducted an exit conference during which SVLAS was provided recommendations in order to avoid future compliance issues. SVLAS 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 January 7, 2009, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the November 11-13, 2008 CSR/CMS visit. SVLAS was asked to review the DR and provide written comments. By letter dated March 26, 2009, SVLAS submitted its comments to the DR. OCE has carefully considered SVLAS' comments and made such revisions as it deems warranted. SVLAS' comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

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

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

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

According to SVLAS, the program goes through great lengths to ensure the accuracy of the data contained in the ACMS. SVLAS indicated they added an administrative assistant in 2008 to run weekly error checks. According to SVLAS any errors or discrepancies are corrected immediately.

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

A majority of SVLAS' intakes are conducted telephonically through the Intake Unit in the Castlewood branch office. The Intake Unit also provides advice and is utilized as a referral hotline. A small percentage of applicants in Castlewood are walk-ins whereas Marion and Christiansburg offices conduct intake strictly for walk-in applicants which is estimated to be less than 10% of all intakes. The Intake Unit consists of five paralegals and a Managing Attorney. Intake is conducted using the Kemps ACMS and is operated five days a week. Eligibility screening is conducted by paralegals; and once an applicant is deemed eligible, advice is provided under the supervision of the Managing Attorney. If more extensive representation is required the client is referred to the appropriate branch office. Each day intakes are reviewed by the main office in Marion for accuracy and compliance.

As stated previously intake in Marion and Christiansburg is conducted strictly by in-person walk-in every day. The intake begins with a region-wide conflicts check. If there is no conflict, income and asset eligibility information and citizenship information is requested. Once an applicant is determined eligible, he/she is assigned to an attorney immediately.

Intake screening is conducted consistently throughout the program's offices. Staff interviews revealed that intake staff is obtaining information in accordance with SVLAS' policy and LSC regulations.

According to SVLAS, error tests of the income eligibility information, citizenship, race, age, gender, problem codes, and funding codes of each new case are conducted on a daily basis. According to SVLAS, this has enabled the program to discover and correct mistakes immediately.

Finding 3: SVLAS 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.

SVLAS' revised Income Guidelines were adopted by its Board in April 2008. SVLAS' eligibility guidelines indicate that a client is financial eligible if their income is at or below 125% of the FPG. In those instances in which the applicant's income is in excess of 125% but no more than 200% of the FPG, SVLAS considers authorized exceptions which are subtracted from the

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.

applicant's income.⁴ The applicant is determined ineligible if their income still exceeds 125% of the FPG after the authorized exceptions are taken into consideration. The review of the Kemps intake program revealed the system automatically subtracts the applicant's income when the authorized exceptions are entered into the ACMS in accordance with the noted policy.

The review revealed there is a minor inconsistency between the language of SVLAS' income policy and the program's ACMS. SVLAS' policy states that if an applicant's income is below 200%, but above 125%, of the FPG the family unit is not eligible unless authorized exceptions are considered. However, according to the ACMS a client will be determined eligible for services if their income is at or below 200% after considering the authorized exceptions, rather than strictly below 200% which is stated in the policy. The Executive Director indicated that the ACMS is correct and that the language in the policy will be changed to reflect that a client is eligible if an applicant's income is above 125% but does not exceed 200% after authorized exceptions are considered.

All sampled cases reviewed evidenced that the applicants were screened for income eligibility.

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

Sampled case files evidenced that SVLAS is in 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.

According to SVLAS, the program immediately changed the income policy to be consistent with the ACMS.

Finding 4: SVLAS 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.⁵ *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).

⁴ Immediately following the CSR/CMS visit LSC was informed by the Executive Director that SVLAS' Board of Directors had voted to change the program's income policy eliminating the requirement of subtracting the authorized exceptions from the applicant's income in order to get their income at or below 125% of the FPG.

⁵ 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.

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.

SVLAS' revised Income Guidelines were adopted by its Board in April 2008 establishing the liquid asset ceiling at \$2,500 for an individual and \$5,000 for a family and the non-liquid asset ceiling at \$5,000 for an individual and \$10,000 for a family. Exempt from consideration is the applicant's principle residence; vehicles used by the applicant or household members for transportation; trusts from household funds for education and medical expenses, value of farmland essential to employment or self-employment, work related equipment essential to employment or self-employment, cash value of IRA or Keogh Plans, equipment required for medical purposes, burial plots belonging to household members who are over 60 or disabled, and assets excluded under the Food Stamp, ADC or SSI programs. The policy also states that a non-liquid asset shall not be regarded as accessible by the applicant if realization of the asset's value would require risk of physical harm, legal or criminal liability, or if legal action would be necessary to realize its value.

Sampled case files reviewed revealed that SVLAS 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.) § 5.4.⁶

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

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

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

⁶ 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.

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.⁷ 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.

SVLAS is in compliance with 45 CFR § 1626.6, as all case files reviewed contained the proper documentation.

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

Finding 6: SVLAS is in 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.

SVLAS is in compliance with the requirements of 45 CFR § 1611.9. All case files reviewed contained a retainer agreement with a statement identifying the legal problem for which representation is sought, and the nature of the legal service to be provided.

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

⁷ *See* Kennedy Amendment at 45 CFR § 1626.4.

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.

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

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

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 SVLAS is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, SVLAS 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, SVLAS 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.”

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

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

Finding 9: SVLAS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There was one case file that did not contain a 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.

SVLAS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as there was one case file reviewed which contained no description of the legal assistance provided. *See* Case No. 06E-40441118. This file is not CSR reportable.

According to SVLAS, the program agrees with this Finding. SVLAS indicated they continue to stress to their staff the importance of providing and documenting particularized advice to a client at the earliest stage of the attorney/client relationship.

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

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

The case files reviewed demonstrated that SVLAS’ application of the CSR case closing categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 11 instances of case closing code errors.

The following are examples of cases with closing code errors. *See* closed 2008 Case Nos. 08E-4055082, 08E-4052666, and 08E-4051990 (These are rejected cases that were closed utilizing the closing code “K” or “other”); *see also* closed 2008 Case No. 05E-4035466 (Case was closed as an “I(b)”, however “L” is the more appropriate closing code. The file contained a court decision removing the SVLAS’ attorney from the case, however, no additional court decisions were located in the file); *see also* closed 2007 Case No. 06E-4038807 (Case closed as an “E”. SVLAS staff provided legal assistance to client then transferred case to a PAI attorney. The client failed to meet with the PAI attorney and the

PAI attorney failed to provide any advice to client. The case should have been closed as a staff case utilizing the closing code “A”); *see also* closed 2007 Case No. 07E-4045192 (Case was closed as an “A”. SVLAS case handler did substantial work on client’s behalf such as drafting bankruptcy paperwork; case should have been closed utilizing a closing code of “B” or “K”); *see also* closed 2007 Case No. 07E-406969 (Case closed utilizing closing “B”. SVLAS attorney provided a significant amount of assistance to the client resulting in a negotiated settlement with the opposing party in the case; the appropriate closing code is an “F”, negotiated settlement without litigation); *see also* closed 2006 Case No. 06E-4039931 (Case was closed utilizing the closing code “D”. SVLAS advised client about the adoption process, however, could not represent the client in court. “A” would have been the appropriate closing code for this case); *see also* Closed 2006 Case No. 06E-1037190 (Case closed utilizing the closing code “J”. Client was incarcerated following intake, however, no legal advice was provided to the client).

According to the Executive Director, SVLAS utilizes the “other” closing code for rejected cases. Following discussions with the Executive Director, SVLAS intends to change all 2008 rejected cases that were utilizing the closing code “Other” to a code that is not currently a LSC closing code.

Although there were no consistent problems with one specific closing code, SVLAS 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.

SVLAS indicated the program agrees with this Finding and has already provided additional training to the staff.

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).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

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).

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).

SVLAS is in compliance regarding the requirements of the CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). There were no case files reviewed that were dormant or untimely closed.

SVLAS indicated they do weekly error checks to ensure there are no timeliness or dormancy issues.

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

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

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

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

SVLAS is in 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.

SVLAS indicated they do weekly error checks to ensure there are no duplicate cases.

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

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

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

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

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

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

The case file review revealed that SVLAS is not providing legal assistance in fee generating cases.

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

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

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

LSC 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 SVLAS' accounting and financial records indicated compliance with 45 CFR Part 1610.

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

Finding 16: SVLAS is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. In addition, SVLAS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

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

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

The three offices at SVLAS each have a PAI program and coordinator. PAI cases enter the program through the normal intake process in the Castlewood office and then are referred to the appropriate branch office. The PAI coordinators determine if a case should be referred to a PAI attorney. Once a case is accepted by a PAI attorney the client is sent an acceptance letter, retainer agreement, citizenship attestation and other documents. Once these documents are returned to the PAI coordinator an appointment is made with the PAI attorney. Quarterly status updates are sent to the PAI attorneys. Once a case is closed the PAI attorney is required to return a complete file, with all pleadings and final orders, which is reviewed by the PAI coordinator. The procedures and mechanisms used to conduct follow-up and oversight of cases

referred to PAI attorneys are uniform throughout the program. Interviews and case review reveals that SVLAS is in compliance with 45 CFR § 1614.3(d)(3).

Interviews revealed that PAI coordinators are closing cases as PAI cases in instances where clients are not receiving advice from a PAI attorney after referral. This practice is incorrect. Since SVLAS' protocol is for staff to provide legal advice prior to referring the case to the PAI attorney such advice should be recorded in the file and the cases reported as staff cases, if no legal assistance is documented as being provided by a PAI attorney. SVLAS should review all of its 2008 closed PAI cases and determine whether legal advice was provided by a PAI attorney. If not, these cases should be reclassified as staff cases and can be reported in the CSR as staff cases – assuming the legal assistance provided by SVLAS staff is documented.

The review of SVLAS' PAI cost allocation worksheets for 2006, 2007, and through October 31, 2008 and the 2006 and 2007 audited financial statements ("AFS") revealed that SVLAS complies with the accounting requirements of 45 CFR § 1614.3(d)(3). The program has met the PAI expenditure requirements for 2006 and 2007. SVLAS maintains sufficient supporting documentation for Judicare payments and staff PAI cost allocation.

SVLAS indicated that the program agrees with this Finding and has reviewed all the closed 2008 PAI cases and the necessary corrections were made.

Finding 17: SVLAS 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 October 31, 2008 disclosed that SVLAS is in compliance with 45 CFR § 1627.4(a).

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

Finding 18: SVLAS 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 SVLAS' timekeeping policies and procedures, a sample of advocates timekeeping records, and interviews with the program's Deputy Director and accountant 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, SVLAS 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 case files reviewed contained an award for attorney fees. Discussions with the Executive Director and fiscal review also confirmed that SVLAS is not involved in this prohibited activity.

In response to the DR, SVLAS 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 case files or documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that SVLAS is not involved in this prohibited activity.

According to SVLAS, the program's practice is for staff to secure Executive Director approval prior to engaging in similar activity that is even permissible under 45 CFR Part 1612.

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 case 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 SVLAS is not involved in this prohibited activity.

SVLAS has indicated that the program has, in accordance with LSC regulations, provided representation in criminal proceedings arising out of transactions in which their client was already being represented by the program. According to SVLAS, the staff attorney is required to seek Executive Director approval, in writing, before providing the criminal representation, and such approval is kept for documentation.

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).¹⁰

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

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

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 case files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that SVLAS is not involved in this prohibited activity.

In response to the DR, SVLAS 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 of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

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

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

¹⁰ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

Finding 25: Sampled cases 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 case files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that SVLAS is not involved in this prohibited activity.

In response to the DR, SVLAS 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.¹¹ This restriction has been contained in all subsequent appropriations acts.¹² This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled case 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 SVLAS is not involved in this prohibited activity.

In response to the DR, SVLAS 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.

¹¹ *See* Section 504(a)(18).

¹² *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).

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

In response to the DR, SVLAS 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 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 case files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that SVLAS 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, SVLAS offered no comments with respect to this Finding.

IV. RECOMMENDATIONS¹³

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

1. Ensure that staff is trained on the proper closing codes categories to comply with CSR Handbook (2008 Ed.), § 6.1.

¹³ 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, SVLAS is required to take the following corrective actions:

1. Ensure that the SVLAS' Income Eligibility Policy is consistent with the ACMS; and

According to SVLAS the program immediately changed the income policy to be consistent with the ACMS.

2. SVLAS should review all of its 2008 closed PAI cases to determine whether legal advice was provided by a PAI attorney. If not, these cases should be reclassified as staff cases and can be reported in the CSR as staff cases – assuming the legal assistance provided by SVLAS staff is documented.

SVLAS indicated that the program agreed with this Finding and has reviewed all the closed 2008 PAI cases and the necessary corrections were made.