



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Blue Ridge Legal Services, Inc.
Case Service Report/Case Management System Review
March 21-25, 2011

Recipient No. 447081

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that BRLS' 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: BRLS' intake procedures and case management system are in compliance with LSC requirements. However, BRLS is non-compliant with CSR Handbook (2001 Ed.), ¶ 4.3 and CSR Handbook (2008 Ed.), § 4.3 by failing to report LSC-eligible cases irrespective of funding source.

Finding 3: Sampled cases evidenced that BRLS 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 exceed 125% of the Federal Poverty Guidelines (FPG).

Finding 4: Sampled cases evidenced that BRLS 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: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of citizenship).

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

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

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

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: Sampled cases evidenced that BRLS' application of the CSR case closure categories are consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3 regarding timely closing of cases.

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

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

Finding 14: A limited review of BRLS fiscal documentation between 2008 and February 15 2011 and interviews with program management indicated the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed to ensure Corporation funds will be used to provide high quality legal assistance and not to support or promote political activities or interests.

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

Finding 16: BRLS provides written notification to its individual contributors of \$250 and over of the prohibitions and conditions which apply to the funds received from sources other than LSC; additional information is needed to assess BRLS' compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities.

Finding 17: BRLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that BRLS has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period.

Finding 18: A review of the allocation of costs method used by the public accountant at year end and of the associated invoices disclosed that BRLS does not use LSC funds to pay for non-mandatory membership fees or dues to private or non-profit organizations in accordance with 45 CFR § 1627.4(a). However, a review of BRLS' internal controls revealed weaknesses with regards to segregation of duties.

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

Finding 20: Interviews with BRLS management and a limited review of the program's fiscal documentation indicated compliance with 45 CFR Part 1642 – Attorneys' Fees during the review period in that the program did not seek, and was not awarded, attorneys' fees.

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

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

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

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

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

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

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

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

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

II. BACKGROUND OF REVIEW

On March 21-25, 2011, the Legal Services Corporation's (LSC) Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review on-site visit at the Blue Ridge Legal Services, Inc. (BRLS). 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 (3) LSC attorneys and one (1) 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 BRLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed BRLS for compliance with regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 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);² 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 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 BRLS' upper and middle management, staff attorneys and support staff. BRLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through February 15, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 403 case files.

BRLS is an LSC recipient that operates a main office in Harrisonburg and branch offices in Roanoke, Winchester, and Lexington. BRLS received a grant award from LSC in the amount of \$696,933 for 2008; \$770,425 for 2009; and \$818,008 for 2010.

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

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC's review and enforcement of this regulation was, therefore, only for the period prior to December 16, 2009.

For 2009, BRLS reported 2,602 closed cases in its CSR data. BRLS' 2009 self-inspection report indicated a 1.3% error rate with exceptions noted in two (2) files out of 151 reviewed. For 2008, BRLS reported 2,548 closed cases in its CSR data. BRLS' 2008 self-inspection report indicated an 3.8% error rate with exceptions noted in six (6) files out of the 158 cases reviewed.

By letter dated January 18, 2010, OCE requested that BRLS provide a list of all cases reported to LSC in its 2008 CSR data submission ("closed 2008 cases"), a list of all cases reported in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases closed between January 1, 2010 and December 31, 2010 ("closed 2010 cases"), a list of all cases closed between January 1, 2011 and February 15, 2011 ("closed 2011 cases"), and a list of all cases which remained open as of February 15, 2011 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by BRLS staff and the other for cases handled through BRLS' PAI component. BRLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12 and the LSC *Access to Records* (January 5, 2004) protocol. BRLS 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 2008, 2009, 2010, and 2011 closed cases and open cases, as well as a proportionate distribution of cases from BRLS' offices. 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 BRLS agreement of February 11, 2011, BRLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³ BRLS' management and staff cooperated fully in the course of the review process. As discussed more fully below, BRLS 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.

On March 25, 2011, OCE conducted an exit conference during which BRLS was provided with OCE's initial findings. BRLS was advised that they would receive a Draft Report (DR) that would include all of OCE's findings and they would have 30 days to submit comments.

³ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

By letter dated May 31, 2011, OCE issued a DR detailing its findings, recommendations, and required corrective actions regarding the March 21–25, 2011 CSR/CMS visit. BRLS was asked to review the DR and provide written comments. By letter dated June 30, 2011 BRLS indicated it did not find any material factual errors or inaccuracies in the document, nor did it have any serious objections to the required corrective actions.

III. FINDINGS

Finding 1: Sampled cases evidenced that BRLS' 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 automated case management system (ACMS) and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (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, BRLS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

There were five (5) cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. *See* Case No. 09-2000097, which is a closed 2010 Harrisonburg case in which the opened date on the ACMS was November 7, 2009. However, the information in the case file indicated that the case was opened on January 7, 2009. Based on the information in the case file this appears to be a typographical error. *See also* Case No. 09E-3006829, which is a 2010 closed Lexington PAI case that should have been closed and reported as a staff case. The staff attorney drafted a complaint and negotiated a settlement with the opposing counsel. There is no indication in the case file that the PAI attorney assisted in the case. *See also* Case No. 09-2002036, which is a closed 2010 Harrisonburg PAI case which was opened in the ACMS on July 26, 2007. However, documentation in the case file indicates the case was opened in 2009. *See also* Case No. 06-2003362, which is a closed 2008 Harrisonburg PAI case. However, there is no documentation that the PAI attorney assisted the client. Prior to referring the case, BRLS staff provided advice to the client. This case should have been closed as a staff case. *See also* Case No. W-990342, which is a closed 2009 Winchester case where the file indicated an opened date of June 18, 1999. The opened date reflected in the ACMS was July 15, 1999.

Finding 2: BRLS' intake procedures and case management system are in substantial compliance with LSC requirements. However, BRLS is non-compliant with CSR Handbook (2001 Ed.), ¶ 4.3 and CSR Handbook (2008 Ed.), § 4.3 by failing to report LSC-eligible cases irrespective of funding source.

BRLS' intake procedures comply with the LSC requirements. Intake was reviewed in the main office and all branch offices. Support staff and managing attorneys were interviewed, and written and electronic documents were reviewed for compliance. Although intake is decentralized, the screening of essential compliance elements is consistent, and BRLS' intake procedures and case management system generally support the program's compliance-related requirements.

Harrisonburg

The vast majority of the Harrisonburg office's applicants are screened by phone. Calls from applicants come in through the office's Receptionist who places the applicant on a list for the Intake Paralegal and interns to contact. If the applicant has an urgent matter (*e.g.*, an immediate court date) she will place them at the top of the call list.

Harrisonburg's Intake Paralegal or an intake intern will call the applicant back between 9:00am and 1:00pm, Monday through Thursday, to conduct an eligibility screening. Interviews indicate that staff collects sufficient information from applicants to do an effective compliant eligibility screening. As for the process, the Intake Paralegal or intern first asks if the applicant is a citizen or eligible alien. If the applicant is, they do a conflict check using the applicant's and adverse party's names, which also serves as a duplicate check.

If there is a conflict, they will inform the caller that they cannot represent them and send a rejection letter noting the reason for the rejection.

If there is no conflict, the Intake Paralegal or intern will proceed to screen the applicant for financial eligibility. Before entering the applicant's financial eligibility information in Kemps, they ask for and enter the number of the applicant's household members, and income and asset information into one of two specially formulated BRLS Eligibility Determination Worksheets. The first screeners under BRLS' General Eligibility Guidelines and the second screens under BRLS' Family Law Guidelines.

Interviews and examinations of BRLS' Eligibility Determination Worksheets evidence that the Intake Paralegal and interns sufficiently inquire about and document different types of income and assets. The worksheets are designed to document the applicant's total income, prospective income, total assets, and the applicant's total asset and income amount. If an applicant's income is over 125% of the Federal Poverty Guidelines (FPG) for a general matter or over 100% of the FPG for a family law matter, the Intake Paralegal or intern will deduct (*i.e.*, spend-down) amounts for those items listed in Section II (D) of BRLS' Operation Manual. If the applicant's income alone or after deductions is over BRLS' guideline amounts, the applicant is rejected. If not, the Intake Paralegal or intern will ask about the applicant's assets. In accordance with BRLS' policy, the Intake Paralegal or intern then determines the applicant's financial eligibility

based on their combined income and asset amounts. This combined figure is then entered into Kemps and the Eligibility Determination Worksheet, which documents total income and total assets, is printed for inclusion in the case file.

If the applicant's combined annual income and asset amount is above BRLS' limit (*i.e.*, 125% of FPG for general cases and 100% of FPG for family law cases), the applicant is rejected unless their income is less than 200% and the applicant is seeking need-based public benefits or if the Executive Directors approves acceptance where the applicant's income is primarily used for nursing home or medical expenses.

At this stage, if the Intake Paralegal has determined that the applicant is eligible for services, she will accept them to receive advice and assign the case to the appropriate attorney. The client is notified of acceptance by phone and given the name of the BRLS staff member who will be providing them with advice.

Although most of the Harrisonburg office's intake screening is conducted by phone, the office also conducts intake for walk-in applicants. Applicants are required to complete an application which requires them to sign a citizenship attestation. If the applicant is a non-citizen, they are asked to complete either the English or Spanish version of the Eligibility Questionnaire for Non-Citizens and the receptionist verifies or copies proof of immigration status.

The completed application is then given to the Intake Paralegal who reviews it. If the applicant is eligible, a case file is created for them in Kemps, and the case is referred to an appropriate staff member.

The office's cases are peer reviewed quarterly as per the Executive Director's peer review system.

Roanoke Office

The Roanoke office conducts intake Monday through Friday from 9:00am to 12:00pm. Interviews indicated the intake staff in Roanoke has some familiarity with BRLS' policies but OCE recommends that staff is re-trained to improve their familiarity with updates to BRLS' eligibility policy and exceptions, as well as LSC requirements.

The Roanoke office also does intake for the Legal Aid Society of the Roanoke Valley (LASRV). During interviews, OCE learned that the conflict check conducted by the Roanoke intake staff shows conflicts for both LASRV and BRLS. If intake staff determines that there is a conflict for either LASRV or BRLS, the applicant is rejected. BRLS should evaluate whether the Virginia Guidelines and Rules of Ethical Conduct or any other rules under which it operates prohibit BRLS from rejecting applicants and informing them that it is due to a conflict, where the conflict is not with a BRLS client but with a LASRV client.

As for case acceptance, the Managing Attorney determines whether a case is accepted by BRLS' Roanoke office and whether it will be handled by staff or a referred to a private attorney. Intake staff does, however, accept clients for LASRV and makes appointments for LASRV clients with an appropriate LASRV attorney.

The Managing Attorney reviews all case files before they are closed. The office's cases are also peer reviewed quarterly as per the Executive Director's peer review system. Interviews and case file review evidenced that this level of oversight is sufficient to ensure compliance.

The majority of intake in the Roanoke office is by phone. The office does not do intake during any clinics or outreach events. Calls from applicants come in through the office's receptionist and are transferred to the intake staff. Intake staff begins by screening for income and assets. Intake Paralegals calculate and document an applicant's total income, prospective income, total assets, and the applicant's total asset and income amount in Kemps. Once this information is entered, Kemps automatically calculates the applicant's "Gross Income and Assets as Percent of Poverty Level."

If the applicant's income and assets are over BRLS' income/asset ceiling, Intake Paralegals also document the applicant's expenses (*i.e.*, income deductions or spend-down) amounts for those items listed in Section II (D) of BRLS' Operation Manual in Kemps. Kemps then also automatically calculates the applicant's "Net Income and Assets as Percent of Poverty Level."

If the applicant's income and assets total are an amount over BRLS' guidelines, they are rejected for service and an Intake Paralegal sends them a rejection letter. If the applicant is financially eligible, a conflicts check is conducted. If there is a conflict with either LASRV or BRLS, the applicant is rejected and an Intake Paralegal sends them a rejection letter.

Since BRLS collects income and assets prior to conducting a conflicts check, it should ensure that inquiring about and saving contact information, and information on income and assets for a person with whom BRLS or LASRV has a conflict, is in accordance with Virginia Guidelines and Rules of Ethical Conduct.

If the applicant is eligible for BRLS service, a packet may be sent depending on the applicant's legal issue. Interviews indicated that in some instances a Pro Bono Representation Agreement is sent to the applicant with a completed scope of representation that the applicant is asked to sign and return. However, because the case has not yet been accepted by an attorney, there is no attorney listed on the retainer. BRLS should evaluate whether the Virginia Guidelines and Rules of Ethical Conduct or any other rules that apply allow a client to agree to "request and authorize the undersigned attorney (the "attorney") to represent me..." where no attorney is designated.

Intake staff meets with the walk-in applicants and follows the same procedure as they would with a phone applicant. Interviews indicated that although intake staff asks about citizenship status, intake staff walk-in applicants are not required to sign a citizenship attestation but instead staff "wait until the client is accepted." If the walk-in applicant is not a citizen, intake staff provides them with the Eligibility Questionnaire for Non-Citizens and obtain a copy of immigration status documentation.

Pursuant to 45 CFR § 1626.6(a), LSC recipients are required to obtain citizenship applications from applicants seen in person. As such, BRLS' Roanoke office should require walk-in applicants to sign a citizenship attestation at the time of intake.

Winchester Office

The Winchester office conducts intake on Mondays, Wednesdays, and Fridays from 9:00am to 2:00pm. The Intake Paralegal is fairly familiar with BRLS' policies and LSC requirements.

Once the Intake Paralegal determines that an applicant is eligible, she will refer it to the appropriate attorney who decides whether to accept the person as a client.

Winchester's Managing Attorney reviews all case files before they are closed and she requests staff run their case lists each month and reviews the list with them. The office's cases are also peer reviewed quarterly as per the Executive Director's peer review system. Interviews and case file review evidences that this level of oversight is sufficient to ensure compliance.

Interviews indicated that the process by which intake is done in the Winchester office is sufficient to support the program's compliance related requirements. Intake is divided almost equally between mail, walk-in, and phone intake. The Intake Paralegal documents eligibility screening and determination on paper and only later enters the information into Kemps. The office does not do intake during any clinics or outreach events.

If an applicant cannot come into the office or prefers to complete and mail an application for services, Winchester's Intake Paralegal will send the applicant a letter requesting they complete an application form to return to the office. Once the Intake Paralegal receives the completed application, she will do a conflict check and if there is no conflict, will phone the applicant to review the information provided to ensure accuracy and inclusivity before she makes a determination of eligibility. If she determines the applicant is eligible, she will enter the applicant's information into Kemps and code the case as a "Staff" case under her name until a staff or private attorney is assigned to the case.

The mail-in application includes a citizenship attestation. Although samples of all other BRLS' forms evidenced the most current language for an attestation as provided in § 5.5 of the CSR Handbook, the mail-in application form did not. The Winchester office should update the language of the citizenship attestation to ensure full compliance with § 5.5 of the CSR Handbook.

Walk-in applicants are provided an application to complete which includes a citizenship attestation and a sufficiently detailed questionnaire to effectively screen applicants. After the forms are completed, the Intake Paralegal will conduct a conflict check. If an applicant is determined eligible, she will enter the applicant's information into Kemps and codes the case as a "Staff" case under her name until a staff or private attorney is assigned to the case.

Winchester's Intake Paralegal also does most of phone intake. Once the Intake Paralegal takes a call from an applicant, she first asks about the type of legal problem and runs a conflict check. If no conflict exists, she inquires as to the applicant's financial eligibility. She enters the information on the same form the office provides to walk-in applicants.

Interviews indicated that after a conflicts check, the Intake Paralegal asks first about household size, income and the income deductions allowed under Section II (D) of BRLS' Operation Manual, and assets. The Intake Paralegal was very familiar with BRLS' asset policy and exceptions. Using a calculator, she divides the applicant's asset total (from which she already would have excluded any asset exclusions under BRLS' policy), divides it by 12, and adds that figure to the applicant's monthly income/asset total. She bases the decision of financial eligibility on that figure, as in accordance with BRLS' policy.

As with mail-in applications, if she determines that an applicant is eligible, she will enter the applicant's information into Kemps and codes the case as a "Staff" case under her name until a staff or private attorney is assigned to the case.

Lexington Office

The Lexington office conducts intake Monday through Friday from 8:30am to 1:30pm. Interviews indicated the intake staff in Lexington has some familiarity with BRLS' policies but OCE recommends that staff is re-trained to improve their familiarity with updates to the BRLS' eligibility policy, exceptions, and LSC requirements.

As for case acceptance, the attorneys and intake staff person have weekly case acceptance meeting to determine whether a case will be accepted by BRLS.

The Lexington office is composed of two (2) attorneys who individually review all their case files before they are closed. The office's cases are also peer reviewed quarterly as per the Executive Director's peer review system. Interviews and case file review evidenced that this level of oversight is sufficient to ensure compliance.

A majority of intake in the Lexington office is by phone. The office does not do intake during any clinics or outreach events.

Calls from applicants come directly to the Intake Paralegal. She begins by screening for income and assets. The Intake Paralegal enters an applicant's total income, prospective income, total assets, and the applicant's total asset and income amount directly into Kemps. Kemps automatically calculates the applicant's "Gross Income and Assets as Percent of Poverty Level."

If the applicant's income and assets are over BRLS' income/asset ceiling, the Intake Paralegal also documents the applicant's expenses (*i.e.*, income deductions or spend-down) for those items listed in Section II (D) of BRLS' Operation Manual in Kemps. Kemps automatically calculates the applicant's "Net Income and Assets as Percent of Poverty Level."

If the applicant's income and assets total an amount over BRLS' guidelines, they are rejected for service and an Intake Paralegal sends them a rejection letter. If the applicant is financially eligible, a conflicts check is conducted.

Intake staff meets with the walk-in applicants and follows the same procedure as they would with a phone applicant.

General Intake Issues

Application of Income Deductions

It should be noted that 45 CFR § 1611.5(a)(4) allows for LSC recipients to consider income exceptions such as those listed in Section II (D) of BRLS' Operation Manual when determining "the applicant's income." No such exceptions apply when determining an applicant's asset eligibility. Although BRLS' eligibility policy is drafted in a manner that calls for the deduction of expenses from "gross income" and not "assets," BRLS should ensure that the forms and processes used to determine financial eligibility do not cause intake staff to deduct those expenses from an applicant's asset figure.

Prospective Income

BRLS' intake staff inquires whether an applicant expects their income to change within the next 30 days. Although there is no requirement that LSC recipients ask for prospective income for several months out from the time of intake, doing so protects the recipient from having to withdraw from an ongoing case where a client becomes over income in the course of representation, as required by 45 CFR § 1611.8(a). As such, BRLS should consider whether the current inquiry provides enough information relating to an applicant's prospective income to help the program avoid requiring its staff or volunteer attorneys to prematurely withdraw from too many ongoing cases.

Information Obtained Prior To Conflict Check

Some of BRLS' intake staff collects, and saves in Kemps or on paper forms, a varying degree of information about the applicant and their legal problem before they perform a conflict check. BRLS should ensure that it is properly handling (e.g., electronic or paper storage) information (e.g., financial, case-specific, etc.) obtained from applicants with whom BRLS has a conflict in accordance with Virginia Guidelines and Rules of Ethical Conduct or any other rules that may apply.

BRLS is non-compliant with CSR Handbook (2001 Ed.), ¶ 4.3 and CSR Handbook (2008 Ed.), § 4.3 by failing to report LSC-eligible cases irrespective of funding source.

Recipients should report all cases in which there has been an eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, provided such cases are completed by the recipient or by PAI attorneys. Cases without such eligibility determinations may not be reported to LSC. This Chapter does not require that programs document client financial eligibility for any cases that are wholly funded by non-LSC funding sources, unless such cases are reported to LSC.

BRLS' Executive Director has a policy of not reporting any cases that are not LSC-funded regardless of whether the applicant is LSC-eligible. BRLS must report all cases where there has been an eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source of funding supporting the cases.

Finding 3: Sampled cases evidenced that BRLS 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 exceed 125% of the Federal Poverty Guidelines (FPG).

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.⁴ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

BRLS has established an annual maximum gross income level for applicants that will not exceed 125% of the FPG. The program's policy requires that an applicant's income must be spent down to at or below 125% of the FPG if the applicant's income is between 125% and 200% of the FPG.

The factors as written in the policy do not match exactly those authorized by 45 CFR § 1611.5(a)(4). One factor, child care, is incorrectly stated and may lead to a misapplication of the regulation. The program's policy and written intake form list child care, though the regulation, 45 CFR § 1611.5(a)(4)(iv), allows consideration of dependent care only as necessary for employment, job training, or education activities in preparation for employment. Furthermore, the program's policy has a factor for health insurance; premiums, prescription costs, and medical bills actually paid by the applicant's household, though the regulation, 45 CFR § 1611.5(a)(4)(iv), allows for these factors only if the expenses are unreimbursed. It is

⁴ 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.

recommended that the child care and healthcare expenses be revised in the policy to ensure the expense is not more broadly applied.

Further BRLS' eligibility policy fails to specify that in assessing income and assets of an applicant who is a victim of domestic violence, BRLS will only consider the income and assets of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence as required by 45 CFR § 1611.3 (e). BRLS should update its eligibility policy in order to comply with this regulation.

It is recommended that the program send a draft of the revised policy to OCE for review by LSC's Office of Legal Affairs prior to presenting the policy to its Board for approval.

It is very rare (*i.e.*, once or twice a year) that BRLS has group applicants. The Executive Director handles inquiries relating to group eligibility and he will typically send them BRLS' Certification of Group Eligibility Form to complete and return.

Notably LSC recipients are required to collect information that reasonably demonstrates that the group meets the eligibility criteria set forth in 45 CFR § 1611.6. *See also* CSR Handbook (2008 Ed.), fn. 20.⁵ Currently, the process for inquiring as to a group's financial eligibility places the burden on the applicant to certify they meet the group eligibility standards. BRLS should revise its procedure for determining group financial eligibility to include a process by which it collects information on the group's income, assets, obligations, purpose, and activities, and BRLS itself makes the determination of eligibility required by 45 CFR § 1611.6.

There were two (2) case files reviewed that failed to contain the required documentation to comply with LSC's income eligibility requirements. *See* Case No. 11-2000335, which is a closed 2011 Harrisonburg case in which the income field was left blank on the ACMS. *See also* Case No. 10E-3002090 which is an open Lexington case where the number in household was listed as "0" in the ACMS, therefore income eligibility was indeterminable.

Finding 4: Sampled cases evidenced that BRLS maintains the 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 §

⁵ Specifically, 45 CFR § 1611.6(b)(1) provides that "[i]n order to make a determination that a group, corporation, association, or other entity is eligible for legal services as required by paragraph (a) of this section, a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either: (i) [f]or groups primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or (ii) [f]or a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group."

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.⁶ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 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 Client Eligibility Guidelines approved by the BRLS Board of Directors is unique compared to most other LSC funded programs. As part of the income eligibility, BRLS adds the applicant's assets to the applicant's projected annual income in determining financial eligibility. If the total exceeds 125% of the FPG the client is determined ineligible unless the Executive Director authorizes that the assets be disregarded due to an unusual or extremely meritorious situation. For example, under BRLS' income and asset policy, if a household's income is only \$1.00 below the annual income ceiling, it will only take \$1.01 in countable assets to render the applicant ineligible, while a household whose income is \$2,000 below the annual income ceiling would need \$2000.01 in countable assets to render the applicant ineligible. The second household needs \$2,000 in countable assets to be rendered ineligible, whereas the first household, which is barely eligible under the income guidelines, needs only \$1.00 to do so. According to BRLS, the idea behind the policy is that the poorer the household in terms of income, the less stringent BRLS should be in requiring the applicant to spend their life savings on legal assistance, since the applicant needs that money to live on more than the household that is just below the poverty line. This formula appears to create a sliding asset ceiling, and there is no language in 45 CFR Part 1611 that prevents a program from creating such a policy. Therefore, based on the review of the policy and its application, LSC has determined that the policy complies with the requirements of 45 CFR § 1611.3(d)(1).

Exempt from consideration is the applicant's homestead property used as the principal place of residence; interest in other real estate when the real estate is producing income in reasonable relation to its value and that income is being considered in making the eligibility determination; \$3,000 of cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash and which are currently and actually available to the applicant; vehicles which are necessary for household transportation; reasonable equity value in work-

⁶ 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.

related equipment that is essential to the employment or self-employment of an applicant or a household member, provided that the owner is attempting to produce income consistent with its fair market value.

There was one (1) case file reviewed that failed to contain the required documentation to comply with LSC's asset eligibility requirements. *See* Case No. 10E-3002502, which is a closed 2010 Lexington case in which the client's assets were \$8000, putting him/her over BRLS' income/asset ceiling. There were no exceptions documented in the file.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of citizenship).

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.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.

Sampled cases evidenced five (5) case files that contained a citizenship attestation but were not dated. *See* Case No. 10-2001406, Case No. 09-3005580, Case No. 10E-3002502, Case No. 10E-3005442, and Case No. 06-2006286. Furthermore, there were 15 cases that failed to contain a citizen attestation when required. *See* Case No. 10-2006060, Case No. 10E-3002397, Case No. 09E-3006505, Case No. 10E-400128, Case No. 07-2005184, Case No. 05-2005117; Case No. 07-2003683, Case No. 09-2000764, Case No. 08-2001511, Case No. 07E-4001232, Case No.

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

11E-3000430, and Case No. 10E-4005722. Three (3) of these cases were open Lexington Guardian Ad Litem cases in which the BRLS attorney indicated she would obtain an attestation next time she met the clients' parents. *See* Case No. 10E-3005970, Case No. 10E-3002090, and Case No. 10E-3006299. There was one (1) case where the citizen attestation was untimely dated. Case No. 07E-3004247, a Lexington case that was closed on July, 19 2008. The citizen attestation was signed on December 9, 2008, approximately five (5) months after the case was closed.

BRLS is in non-compliance with 45 CFR § 1626.6 (Verification of citizenship). BRLS must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁸ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

BRLS is in substantial compliance as there were two (2) cases reviewed from the sample that failed to contain a retainer agreement when required. *See* Case No. 09E-3006706, and Case No. 03-2004571. There were two (2) Harrisonburg cases where the retainer agreements were not dated. *See* Case No. 10-2001406, and Case No. 06-2006286. There were two (2) cases where the retainers were untimely obtained. *See* Case No. 07E-3004247 and Case No. W-990342, a closed 2009 Winchester case where the retainer was obtained on October 18, 2002, approximately three (3) years after representation commenced on July 15, 1999. There were three (3) cases which did not contain a sufficient description of the scope of services that BRLS agreed to provide to the client. *See* Case No. 09E-3002126, a 2010 Lexington case which states the subject matter of the case, divorce, but the scope of representation is not indicated in the agreement. *See also* Case No. 09E-3005556, a 2009 closed Lexington case which states the subject matter of the case, unemployment benefits, but the scope of representation is not indicated in the agreement. *See also* Case No. 08E-3003041, a 2009 closed Lexington case which states the subject matter of the case, divorce, but the scope of representation is not indicated in the agreement.

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

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

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

Case files reviewed indicated that BRLS is in compliance with the requirements of 45 CFR Part 1636. All cases reviewed had a statement of facts when required.

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.

BRLS is in compliance with 45 CFR Part 1620. All sampled files reviewed were within BRLS' priorities.

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

LSC regulations specifically define "case" as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the CSR data, depends, to some extent on whether the case is within the recipient's priorities and whether the recipient has provided some level of legal assistance, limited or otherwise. If the applicant's legal problem is outside the recipient's priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

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

BRLS is in substantial compliance as there were four (4) cases reviewed from the sample that failed to contain a description of the legal assistance provided. *See* Case No. 10E-4001518, Case No. 10E-4006258, Case No. 08E-4003160, and Case No. 06-200687.

Finding 10: Sampled cases evidenced that BRLS' application of the CSR case closure categories are consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

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

The files reviewed demonstrated that BRLS' application of the CSR case closing categories are consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). There were nine (9) instances of case closing code errors. *See* Case No. 09E-3006531, a 2009 Lexington eviction case that was closed utilizing the closing code "B" (Limited Action). The attorney negotiated a settlement with the landlord which prevented the client from being evicted. Closing code "F" (Negotiated Settlement Without Litigation) is the applicable closing category. *See also* Case No. 10-2001039, a 2010 Harrisonburg case that was closed utilizing the closing code "A" (Counsel and Advice). The attorney drafted a will for the client. The applicable closing category is "B" (Limited Action). *See also* Case No. 10-2001034, a 2010 Harrisonburg case that was closed utilizing the closing category "A" (Counsel and Advice). The attorney drafted a power of attorney for the client. The applicable closing category is "B" (Limited Action). *See also* Case No. 09-2002036, a 2009 Harrisonburg case that was closed utilizing the closing code "B" (Limited Action). Only legal advice was documented in the file. The applicable closing category is "A" (Counsel and Advice). *See also* Case No. 06-2005560, a 2009 Harrisonburg case that was closed utilizing the closing code "L" (Extensive Service). According to the notes in the file, the attorney provided advice to the client and had one meeting with the City Attorney. Closing code "B" (Limited Action), is the applicable closing category. *See also* Case No. 09-200116, a 2009 Harrisonburg case that was closed utilizing the closing code "L" (Extensive Service). The attorney reviewed documents and provided advice to the client. The applicable closing category is "B" (Limited Action). *See also* Case No. 08-2003003, a 2008 Harrisonburg case that was closed utilizing the closing category "B" (Limited Action). The attorney provided advice and referred the case to a private attorney. The applicable closing category is "A" (Counsel and Advice). *See also* Case No. 11E-3000146, a closed 2011 Lexington case that was closed with case closure category "A" (Counsel and Advice), however, the representing attorney conducted third-party communication on behalf of the client, therefore, the case should have been closed with closure category "B" (Limited

Action). *See also* Case No. 09E-4003342, which is a closed PAI case that utilized the closing category “I-A” (Uncontested Court Decision) when case documentation indicated it was a contested proceeding. Closing category “I-B” (Contested Court Decision) is the applicable closing category.

Finding 11: Sampled cases evidence substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.) § 3.3.

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, limited action, 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, limited action, 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).

BRLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were five (5) case files reviewed that were not closed in a timely manner. *See* Case No. 10-2004165, a 2011 Harrisonburg case that was opened in August 2010. Advice was provided and a closing letter was sent to the client in November 2010. The case was mistakenly closed as non-CSR reportable. After realizing the mistake the case was reopened in January 2011 and closed the same day. This case should have been reported in 2010. *See also* Case No. 07-2003375, a 2010 Harrisonburg case that was opened in 2007. There was continuous work in the file in 2007 and 2008, however, there was no documented work in 2009. This case should have been closed and reported in 2009. *See also* Case No. 09e-3003428, a 2010 Lexington case that was opened in June 2009. The attorney resolved the client’s issue in September 2009. A closing letter was sent to client in July 2010 and the case was closed in October that same year. There is no explanation in the file as to why the case remained opened from September 2009 through July 2010. This case should have been closed and reported in 2009. *See also* Case No. 06-2003362, a 2008 Harrisonburg case that was referred to a PAI attorney in 2006. The case was closed on August 13, 2008. There is no documented work in the file from 2006 to 2008. *See also* Case No. 05-2005117, a 2008

⁹ The time limitation of the 2001 Handbook that a limited action 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).

Harrisonburg case that was opened in 2005 and closed on October 29, 2008. The last documented contact with the client was in 2005.

Finding 12: Sampled 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.

BRLS 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.

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

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients' full-time attorneys. Under the standards set forth in this part, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

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

Finding 14: A limited review of BRLS fiscal documentation between 2008 and February 15 2011 and interviews with program management indicated the program is in compliance with 45 CFR Part 1608 (Prohibited political activities) which is designed to ensure Corporation funds will be used to provide high quality legal assistance and not to support or promote political activities or interests.

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.

The limited review of various accounting files and supporting documentation for the period of January 1, 2008 through February 15, 2011, as well as an interview with the Program Administrator disclosed that BRLS does not appear to have expended any grant funds, nor has used personnel or equipment in prohibited political activities in violation of 45 CFR §§ 1608.3(b) and 1608.4(b), therefore, BRLS is in compliance.

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

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

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

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

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 as there were no fee-generating cases reviewed.

Finding 16: BRLS provides written notification to its individual contributors of \$250 and over of the prohibitions and conditions which apply to the funds received from sources other than LSC. Additional information is needed to assess BRLS' compliance with 45 CFR § 1610.8 regarding program integrity from entities engaging in LSC restricted activities.

LSC regulation 45 CFR § 1610.5 Notification states:

- a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.
- b) A recipient is not required to provide such notification for receipt of contributions of less than \$250.

Refer also to LSC Program Letter 96-3 – Notification of Other Funders which provides further clarification regarding notifications required when a program accepts non-LSC funds. It states, in part, that a program should notify funders of the application of the restrictions to their funding during the course of soliciting funds or applying for a grant or contract and also for contracts and grants already awarded but for which further payments are contemplated.

The program has established a process to provide the written notification to its individual contributors of \$250 and over. A limited review was conducted of 12 donor letters for 2008, 2009, and 2010 contributions. The letters BRLS sent to its donors comply with the requirements of 45 CFR § 1610.5 Notification.

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).

The CSR/CMS onsite review confirmed that BRLS has a contractual relationship with the LASRV, a non-profit organization that provides assistance to low-income persons and conducts some activities prohibited by LSC regulations. This relationship includes the following: BRLS conducts all intake for LASRV; and BRLS is compensated by LASRV to provide legal services to eligible clients in the Lexington, Virginia service area. After assessing the information gathered during the onsite review, it is determined that additional information is needed before a finding can be made regarding BRLS' compliance with 45 CFR § 1610.8. LSC will be contacting BRLS in order to obtain additional information and documents required to complete its assessment.

Finding 17: BRLS is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that BRLS has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period.

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

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

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

The Audited Financial Statements (AFS) for the year ending December 31, 2009 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The reported figure of \$112,712 of PAI Funds in 2009 represents 14.9% of the total basic field grant of \$757,598. BRLS allocates attorneys' and paralegals' direct time associated with PAI activities and calculated hourly rate as required by 45 CFR § 1614.3(e)(1)(i). The quarterly PAI calculations for FY 2009 were reviewed and tested and found to be allocated and computed correctly. Also, indirect cost rates were tested and found to be allocated on the basis of reasonable operating data.

The quarterly calculations for PAI for FY 2009 total \$117,656. The figures were compared to the AFS for FY 2009 in an effort to ascertain whether the figures were consistent. A discrepancy

of \$4,944 was noted. According to BRLS' auditor it was a mistake on the auditor's spreadsheet and that the Program Administrator's figures were correct.

BRLS' General PAI Referral and Oversight

All of BRLS' PAI cases are pro bono and the program does not use contract or judicare attorneys. They do not use private attorneys for clinics. The Roanoke office, however, does staff an advice hotline with private attorneys, which is discussed in more detail below.

Intake for all PAI cases is done by the Intake Paralegal(s) in each particular office. Once the Intake Paralegal makes a determination that the client is eligible for services, the case is referred to a BRLS staff member to evaluate - either themselves, by a Managing Attorney, or through a case acceptance meeting - what level of service BRLS can and should provide the client. If the case is suitable for a private attorney referral, they will instruct the PAI Referral Coordinator ("Referral Coordinator") in their office to find a suitable attorney. Each of BRLS' offices has its own Referral Coordinator who oversees PAI cases for that office.

The relevant PAI Referral Coordinator then assumes responsibility for placing the case, overseeing its completion, and collecting any required documentation needed for the case file. More details as to BRLS' PAI referral, oversight, and case closure procedures for each office is provided below.

Harrisonburg Office

The types of cases the office refers to PAI attorneys range from no-fault divorce and family law cases, to contract disputes, to predatory lending cases.

Once an applicant is accepted by intake staff and referred to a staff member, that staff member - either themselves or through a case acceptance meeting - decides that the client's needs can best be served by referral to a private attorney. That staff member writes the client and informs them that BRLS is attempting to refer their case to a private attorney and provides the case file to the Referral Coordinator who marks the case handler "pending" in Kemps Prime.

The Referral Coordinator then attempts to refer the case to a private attorney. Some cases will be referred directly from BRLS, but the majority of the Harrisonburg office's PAI cases are referred through The Harrisonburg-Rockingham Bar Association ("Bar Association"). The Bar Association has a very extensive and effective network of local attorneys who accept pro bono referrals. The Bar Association actively recruits local attorneys for pro bono cases. It then divides these volunteers into five (5) teams, each lead by a Team Leader, who is an experienced and respected attorney in the community. Team Leaders regularly meet with staff at BRLS to discuss case referrals. If, during those meetings, a Team Leader believes he or she can successfully place the case with a team member pro bono volunteer, they will do so. Once a Team Leader has successfully referred a case, they will contact the Referral Coordinator to inform her of who will handle the case.

The Referral Coordinator then contacts the attorney and inquires if there are any conflicts. If not, she will then call the client to notify them of the referral and the need to contact the private attorney about the case and send the client a letter with the attorney's contact information with additional instructions. The Referral Coordinator also sends the private attorney who has accepted the case a letter requesting they complete and return an Initial Client Consultation Report and a Pro Bono Representation Agreement which includes the citizenship attestation.

Once the Referral Coordinator sends the above listed letters, she uses Kemps Prime to tickle a follow-up date. She will typically follow-up in two (2) or three (3) weeks, depending on the case timeframe, the case subject matter, and her understanding of the private attorney's availability. If she has not yet received the completed Initial Client Consultation Report and/or Pro Bono Representation Agreement, she will send the private attorney a follow-up letter inquiring as to the status and tickles a follow-up date in another two (2) or three (3) weeks. She continues to follow-up by phone and correspondence if the private attorney does not respond, but notes there is typically a high rate of responsiveness.

Once the Referral Coordinator receives the Initial Client Consultation Report and/or Pro Bono Representation Agreement she will set another tickle date in Kemps for when she will follow-up on the case status. Each time she receives a case update, she tickles it again for additional follow-up until the case is completed. Every two (2) or three (3) weeks she will also run a list of all her cases to ensure there is a follow-up date designated to ensure all cases have proper oversight.

Once a case is completed, the Referral Coordinator writes the private attorney who handled the case and asks that they complete and return a Final Case Disposition Report. Once she receives the completed Final Case Disposition Report, she instructs a BRLS intern to complete a Case Closing Memorandum. She then assigns the case a closing date and notes why it should be closed. BRLS' Executive Director then conducts a final review of the case file and if it is in order, he provides the file to intake staff to close the case in Kemps.

Roanoke Office

Once a client has been screened by an Intake Paralegal in the Roanoke office and determined to be eligible, Roanoke's Managing Attorney will determine whether the client's case should be referred to a private attorney. If so, she will ask the office's Referral Coordinator to find a private attorney to handle the case. The Referral Coordinator will generally call private attorneys she knows will take direct pro bono referrals in the community. Once she places the case, she provides the attorney with a Pro Bono Representation Agreement which includes the citizenship attestation and a Case Closing Memorandum to return when the case is completed.

The Roanoke office uses the same tickler method as the Harrisonburg to continue to follow-up on the status of pending PAI cases. Also like in Harrisonburg, the Referral Coordinator will contact the attorneys to which cases have been referred by phone or follow-up letters on the date the case has been tickled and notes the status in the case file until the case is completed. She will also look up the status of the case in the court's local docket system to ascertain the status of a pending case. She also requires that the attorney handling the case complete and return a Final

Case Disposition Report once the case is over. The Referral Coordinator typically relies on the attorney to send the client a closing letter.

In terms of oversight, the Roanoke's Referral Coordinator meets with the Managing Attorney every third Wednesday of the month to review all pending cases and to discuss cases on which little progress has been made or which have been open for too long.

Hotline Cases

The Managing Attorney for the Roanoke Office oversees the Hotline. Hotline clients have already been screened for eligibility by intake staff. If the Managing Attorney decides that an eligible applicant can be helped by a Hotline volunteer, intake staff will request the applicant be able to be reached by phone during a certain Tuesday time window. Each Tuesday, two (2) or three (3) volunteer attorneys who have been pre-selected through a local young lawyers association come into the office to call clients in need of advice. Hotline attorneys must complete a Hotline Advice Form for each call they make. The Managing Attorney reviews all such completed forms to ensure that the advice given was correct and appropriate. If not, she asks the hotline volunteer attorney to call the client back to provide them with correct advice.

Winchester Office

Interviews indicated that approximately 30% to 35% of the Winchester's total cases are PAI cases. Approximately 90% of the office's PAI cases are divorce cases. As in the Roanoke office, once an applicant has been screened by the Intake Paralegal in the Winchester office and determined to be eligible, Winchester's Managing Attorney will determine whether the client's case should be referred to a private attorney. If so, she will ask the office's Referral Coordinator to find a private attorney to handle the case.

The referral and oversight procedures and practice in the Winchester office is very similar to that used in the Roanoke office (*e.g.*, using a tickler system to ensure timely oversight and follow-up). The Referral Coordinator will contact the client by letter to inform them about BRLS' pro bono program and asks them to call her for more information.

Once a private attorney has accepted a case, the Referral Coordinator writes the client to inform them to contact the private attorney and writes the private attorney providing them with an Initial Client Consultation Report and a Pro Bono Representation Agreement which includes the citizenship attestation. She then tickles the file for follow-up and sends a follow-letter if needed. Once she receives the Initial Client Consultation report which contains an anticipated completion date, she tickles the file for follow-up on that date. She then writes the private attorney to provide them with a Final Case Disposition Report. She then tickles the file again for follow-up and sends another follow-letter if needed.

Once a case is completed, the Referral Coordinator will write the client to inform them of BRLS' plans to close their case. She then closes the case, enters the closing information into Kemps, and provides the Managing Attorney with the file for review.

In order to ensure proper follow-up on all cases, the Referral Coordinator runs her list of pending cases every three (3) or four (4) months to ensure they have been tickled for appropriate follow-up.

Lexington Office

Interviews and case review reveal that Lexington has a very limited PAI referral program. In the past three (3) years the Lexington office has placed four (4) cases with pro bono attorneys. Since PAI referrals are limited there are no formal procedures for referring cases or case oversight.

PAI Case Review

Overall several PAI case files that required citizenship attestations did not contain them. This is due to BRLS' procedure of relying on the PAI pro bono attorney in obtaining a signed attestation. This increases the likelihood of compliance related issues since this is not standard practice for a private attorney. LSC recommends that all eligibility information, including citizenship attestations, be collected from the client by BRLS, prior to referring their case to a private attorney.

Finding 18: A review of the allocation of costs method used by the public accountant at year end and of the associated invoices disclosed that BRLS does not use LSC funds to pay for non-mandatory membership fees or dues to private or non-profit organizations in accordance with 45 CFR § 1627.4(a). However, a review of BRLS' internal controls revealed weaknesses with regards to segregation of duties.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to AGLSCR (2010 Edition), the CSR Handbook, the LSC Property Manual, the Property Acquisition and Management Manual (PAMM), and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. *See* LSC Grant Assurances for Calendar Year 2010 Funding (Form C), Assurance 1.

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

The AGLSCR provides guidance on all aspects of fiscal operations and the 2010 revised edition has a significantly revised Accounting Procedures and Internal Control Checklist that provides guidance to programs on how accounting procedures and internal control can be strengthened

and improved with the goal of eliminating, or at least reducing as much as reasonably possible, opportunities for fraudulent activities to occur. Refer to AGLSCR (2010 Edition), Appendix VII – Accounting Procedures and Internal Control Checklist and LSC Program Letter 10-2, Appendix A - Embezzlement, Fraud, and the Critical Importance of Effective Internal Control.

Allocation of Costs

The method of cost allocation by the public accountant and copies of the associated invoices were provided by BRLS to OCE by letter dated June 30, 2011. According to that information, BRLS' public accountant reviews all expenses to ensure that costs not allowed by LSC are not allocated or charged directly to LSC. Non-mandatory membership fees or dues are costs that cannot be charged to LSC and, accordingly, are charged to non-LSC funds at year end. A review of copies of invoices for non-mandatory fees or dues to private or non-profit organizations noted that the charges were properly charged to the account 652-000-H-Restricted-use non-LSC funds for the years 2008 through 2010.

Internal Fiscal Controls

The completed Internal Control Worksheet revealed a need for stricter internal controls in the areas of procurement, property, and the general journal. BRLS' fiscal staff consists of one Program Administrator who is responsible for all the accounting functions, therefore, lacking the segregation of duties requirements of the AGFLR. For example, the Program Administrator is responsible for six (6) of the eight (8) functions relating to procurement. She is responsible for all three (3) property functions and she is responsible for five (5) of the six (6) functions relating to the general journal. The program needs to have more staff members involved and to segregate these duties to comply with the AGFLR.

Bank Reconciliations

The bank account reconciliation process is performed monthly by the Program Administrator. A limited review of BRLS' bank reconciliations indicates that its bank statement receipt and reconciliation process is performed timely.

BRLS has used the same auditing firm for the past 25 years. It is good accounting practice to have this assignment put out for competitive bidding on a regular basis to avoid familiarity from developing between the auditor and the program. As it has been many years since BRLS changed audit firms, the program should consider changing auditing firms in the near future.

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

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

available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

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. Per 45 CFR § 1635.3(b) 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 as required under 45 CFR § 1635.3(c). Finally, 45 CFR § 1635.3(d) mandates that 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 five (5) advocates' timekeeping records selected for the periods of January and September 2008, March and October 2009, April and December 2010, and January and February 2011 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

Interviews with the Program Administrator disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d).

Finding 20: Interviews with BRLS management and a limited review of the program's fiscal documentation indicated compliance with 45 CFR Part 1642 – Attorneys' Fees during the review period in that the program did not seek, and was not awarded, 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).

Due to regulatory changes, LSC has also prescribed certain specific requirements for fee-generating cases in Program Letter 10-01 Supplemental Guidance on Attorneys' Fees, LSC will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. The regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

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 a prayer for attorneys' fees.

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

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.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁰

None of the sampled files reviewed involved initiation or participation in a class action.

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

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

None of the sampled files reviewed revealed participation in litigation related to redistricting.

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

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

None of the sampled files reviewed involved defense of any such eviction proceeding.

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

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹¹ This restriction has been contained in all subsequent appropriations acts.¹² 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.

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

No LSC funds may be used to compel any person, institution or governmental entity to provide or fund any item, benefit, program, or service for the purpose of causing the suicide, euthanasia, or mercy killing of any individual. Nor 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.

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).

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

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that BRLS 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.

IV. RECOMMENDATIONS¹³

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

1. Evaluate whether the Virginia Guidelines and Rules of Ethical Conduct or any other rules under which it operates prohibit BRLS from rejecting applicants and informing them that it is due to a conflict, where the conflict is not with a BRLS client but with a LASRV client;
2. Evaluate whether the Virginia Guidelines and Rules of Ethical Conduct or any other rules that apply allow a client to agree to "request and authorize the undersigned attorney (the "attorney") to represent me..." where no attorney is designated;
3. Ensure it is properly handling (*e.g.*, electronic or paper storage) information (*e.g.*, financial, case-specific, etc.) obtained from applicants with whom BRLS has a conflict in accordance with Virginia Guidelines and Rules of Ethical Conduct or any other rules that may apply;
4. Consider whether its current inquiry into prospective income provides it with enough information relating to a applicant's prospective income to help it avoid requiring its staff or volunteer attorneys to withdraw from ongoing cases where a client becomes ineligible;
5. Collect all eligibility information, including citizen attestations, prior to referring a case to a private attorney;
6. Consider changing auditing firms for 2011; and
7. Ensure that the expensed or factors used to determine income eligibility do not cause intake staff to deduct those same expenses from a client's asset figure.

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, BRLS is required to take the following corrective actions:

1. Ensure that all case files contain sign and dated citizenship attestations pursuant to 45 CFR Part 1626 and that the attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5;
2. Require all walk-in applicants to sign a citizenship attestations at the time of intake;
3. Provide additional training to BRLS intake staff on BRLS' eligibility policy and the requirements of the CSR Handbook;
4. Revise its procedure for determining group financial eligibility to include a process by which it collects information on the group's income, assets, obligations, purpose, and activities, and BRLS itself makes the determination of eligibility required by 45 CFR § 1611.6;
5. Update the language of the citizenship attestation in the form for mail-in applications to ensure full compliance with § 5.5 of the CSR Handbook;
6. Report all cases where there has been an eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source of funding supporting the cases;
7. Segregate duties of the Program Administrator in order to comply with the AGFLR;
8. Update eligibility policy to ensure compliance with 45 CFR §§ 1611.3 (e) and 1611.5 (a)(4). and

In its comments to the DR, BRLS indicated it did not find any material factual errors or inaccuracies in the document, nor did it have any serious objections to the required corrective actions.



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HARRISONBURG, VIRGINIA 22803
(540) 433-1830
FAX (540) 433-2202

(800) 237-0141
FOR CLIENTS ONLY

PLEASE RESPOND TO BOX 551

June 30, 2011

DANA J. CORNETT
PRESIDENT

JOHN E. WHITFIELD
EXECUTIVE DIRECTOR
& GENERAL COUNSEL

Danilo A. Cordona, Director
Office of Compliance and Enforcement
Legal Services Corporation
333 K Street, NW 3rd Floor
Washington, DC 20007-3522

***Re: Comments to CSR/CMS Visit Draft Report
from Blue Ridge Legal Services, Inc., Recipient # 447081***

Dear Mr. Cardona:

I am writing to provide our comments to the LSC's Draft Report, dated May 31, 2011, for the on-site CSR/CMS review of Blue Ridge Legal Services, Inc. which took place on March 21-25, 2011, and to provide the information and documents requested from us in that Draft Report.

As a preliminary matter, I want to convey my appreciation for the professionalism and cordiality displayed by the LSC's monitoring team leader and team members during their visit. They were a pleasure to work with.

Having reviewed the Draft Report a number of times, I have not found any material factual errors or inaccuracies set forth in the document, nor do I have any serious objections to the proposed required corrective actions.

In response to your request that we submit certain additional information and documents with our comments, attached please find the following:

- An explanation provided by our auditor, Frank Barcalow, describing:
 - the method our auditor uses to determine the allocations for different funding sources;
 - BRLS' cost allocation policy and the method we use to allocate costs; and
- Copies of invoices for years 2008 through 2010 for dues paid to



HARRISONBURG OFFICE—Serving Rockingham, Page, Augusta, Highland, and southern Shenandoah Co., Cities of Harrisonburg, Staunton, and Waynesboro.
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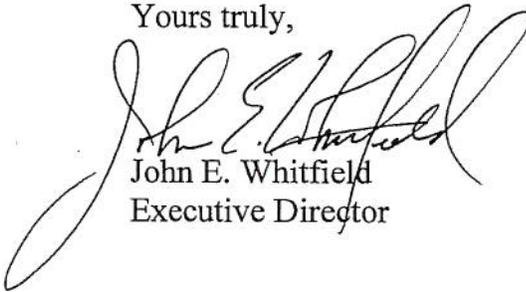


June 30, 2011

the Virginia Bar Association, NACA, Augusta County Bar Association, and the Treasurer of Virginia.

I trust you will find these enclosures responsive to your request. If you need anything additional, please let me know.

Yours truly,

A handwritten signature in black ink, appearing to read "John E. Whitfield". The signature is stylized with large loops and a long tail that extends to the left.

John E. Whitfield
Executive Director

Enclosures

Blue Ridge Legal Services Cost Allocation Policy

Blue Ridge Legal Services follows the LSC cost standards as stated in 1630.3.

Direct costs are charged directly to the grant or contract when the costs are specifically identified with the related grant or contract services.

If the costs cannot be directly allocated to specific grants or contracts then an indirect method is used. Blue Ridge essentially has one function, i.e., the delivery of legal services to low-income clients. Therefore, the simplified allocation method is used where costs are allocated based on percentage of employee salaries paid against total expense. Some additional indirect allocations are done based on costs that are related to some grants more than others (an example is repairs and maintenance where LSC has purchased the majority of assets their related repairs are charged to LSC). These exceptions are based on management's knowledge and experience and are reviewed each year.

Other exceptions to this allocation method are PAI costs where direct costs of attorneys and support staff are charged directly along with any related expenses. The other exception is professional dues and fees are directly allocated to Legal Services Corporation of Virginia.

When there are any questions or additional guidance needed LSC cost standard from section 1630.3 is used.

Auditor Review of Cost Allocation Policy

The auditor reviews cost allocations for consistency of application, examines invoices to insure direct costs are not indirectly allocated and examines the quarterly PAI time keeping system and reviews the PAI calculation for accuracy.

The auditor reviews all expenses to insure any costs not allowed by LSC are not allocated to LSC or charged directly to LSC. Any costs that may be against LSC policies are noted and reported to LSC if found.

The auditor, based on review of all cost allocations, may make some changes to the cost allocations if this results in a more accurate reporting for the financial statements. Any changes are noted and management of Blue Ridge Legal Services given the changes for review and approval.

LAW OFFICES

ALLEN & CARWILE

A PROFESSIONAL CORPORATION
SUITE 200, L B & B BUILDING
109 SOUTH WAYNE AVENUE
POST OFFICE DRAWER 1558
WAYNESBORO, VIRGINIA 22980-1415

G. WILLIAM WATKINS
TIMOTHY C. CARWILE
FRANCESCA HEDE GOMEZ*
*Admitted in Virginia and the District of
Columbia
DAVID L. MECKS

July 30, 2010

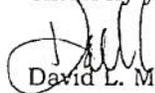
CARTER R. ALLEN
(1921 - 2008)
R. TOMS DALTON, JR.
Of Counsel
TELEPHONE:
(540) 932-2400
FAX:
(540) 932-2424

Dear Members of the Augusta Bar Association:

The annual dues for members of the Augusta Bar Association are due October 1, 2010. If you wish to remain or join as a member in good standing, please send your \$25.00 check made payable to "Augusta Bar Association" to me at the address on this letterhead by October 1. Please note that retired and honorary members are not required to pay membership dues.

As many of you know we are now providing bar notices via electronic mail. If you are not currently receiving email notices and would like to, please provide your email address to Colleen Taylor at cht@bnrpl.com or to me at dmeeks@allencarwile.com with your annual dues payment. We are also continuously updating our membership and mailing lists, so if your firm has new attorneys or your contact information has changed, please provide your updated information when paying your annual dues or notify Colleen of any changes as they occur during the year.

Sincerely yours,


David L. Meeks
Treasurer

652-000-H
Restricted-use non-LSC
funds

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DAVID L. MEEKS

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Direct Dial: (540) 932-2400
e-mail
dmeeks@allencarwile.com

September 16, 2008

Dear Members of the Bar:

The annual dues for members of the Augusta Bar Association are due October 1, 2008. If you wish to remain or join as a member in good standing, please send your \$25.00 check made payable to "Augusta Bar Association" to me at the address on this letterhead by October 1. Please note that retired members are not required to pay membership dues.

As many of you know we are now providing bar notices via electronic mail. If you are not currently receiving email notices and would like to, please provide your email address to Shelley Bishop at sbishop@wawlaw.com or me with your annual dues payment. We are also continuously updating our membership and mailing lists, so if your firm has new attorneys or your contact information has changed, please provide your updated information when paying your annual dues or notify Shelley of any changes as they occur during the year.

Sincerely yours,

David L. Meeks
Treasurer

*Restricted -
use non-LSC funds
652-000-H*

for John