



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

Southern Minnesota Regional Legal Services, Inc.  
Case Service Report/Case Management System Review  
September 19-22, 2011

Recipient No. 524030

## **I. EXECUTIVE SUMMARY**

**Finding 1:** Sampled cases evidenced that SMRLS's 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:** SMRLS's intake procedures and case management system generally support SMRLS's compliance related requirements. However, there were exceptions noted with respect to screening for income/asset eligibility, citizenship eligibility, and income prospects.

**Finding 3:** With a limited number of exceptions, sampled cases evidenced that SMRLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG). Additionally, SMRLS's income eligibility policy is compliant with 45 CFR §§ 1611.5.

**Finding 4:** With two (2) exceptions, sampled cases evidenced that SMRLS maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. SMRLS's asset eligibility policy is substantially compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e). However, as noted previously, additional training is necessary regarding application of that policy during intake screening.

**Finding 5:** SMRLS is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were sampled case files reviewed that did not contain a citizenship attestation. Additionally, there were a limited number of cases reviewed that contained untimely or undated citizenship attestations. Policies reviewed evidenced compliance with 45 CFR Part 1626.

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

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

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

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

**Finding 10:** Sampled cases evidenced that SMRLS's application of the CSR case closure categories is consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.).

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

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

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

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

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

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

**Finding 17: SMRLS is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. Additionally, SMRLS is in compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.**

**Finding 18: SMRLS is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization. Policies reviewed evidenced compliance with 45 CFR § 1627.4(a).**

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

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

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

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

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

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

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

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

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

**Finding 32: A limited review of SMRLS's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2. However, the client trust accounts reconciliations lacked signatures and dates, which are necessary to establish review and approval by management.**

## II. BACKGROUND OF REVIEW

During the week of September 19 - 22, 2011, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) Review at Southern Minnesota Regional Legal Services, Inc. (SMRLS). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of nine (9) attorneys and two (2) fiscal analysts.

The on site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that SMRLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed SMRLS for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement);<sup>1</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)<sup>2</sup>; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of SMRLS's upper and middle management, staff attorneys, and support staff. SMRLS's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, case file review was conducted. The sample case review period was from January 1, 2009 through August 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 selected 1,131 cases to review on site, which included 127 targeted files. All of the selected cases were reviewed.

SMRLS currently provides legal services to eligible clients in the following counties in southern Minnesota: Blue Earth, Brown, Carver, Cottonwood, Dakota, Dodge, Faribault, Fillmore,

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

<sup>2</sup> 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.

Freeborn, Goodhue, Houston, Jackson, Le Sueur, McLeod, Martin, Mower, Murray, Nicollet, Nobles, Olmsted, Pipestone, Ramsey, Redwood, Rice, Rock, Scott, Sibley, Steele, Wabasha, Waseca, Washington, Wattonwan, and Winona. SMRLS provides client services at 10 offices located in the cities of St. Paul, Albert Lea, Mankato, Rochester, Winona, Worthington, Eastside, and Shakopee, Minnesota, and Fargo, North Dakota. Both the administrative office of the program, as well as SMRLS's central office, is located in St. Paul, Minnesota.

SMRLS received grant awards from LSC in the amounts of \$1,634,835.00 for 2009, \$1,765,194.00 for 2010, and \$1,692,225.00 for 2011. In its 2010 CSR submission to LSC, the program reported 10,249 closed cases; in its 2009 CSR submission to LSC, the program reported 10,493 closed cases. SMRLS's 2010 self-inspection certification revealed a 2.11% error rate in CSR reporting. SMRLS's 2009 self-inspection certification revealed a 4.93% error rate in CSR reporting.

By letter dated July 18, 2011, OCE requested that SMRLS provide a list of all cases reported to LSC in its 2009 CSR data submission (closed 2009 cases), a list of all cases reported in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed between January 1, 2011 and August 15, 2011 (closed 2011 cases), and a list of all cases which remained open as of August 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 SMRLS staff and the other for cases handled through SMRLS's PAI component. SMRLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). SMRLS was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on site visit. The sample was developed proportionately among 2009, 2010, 2011 closed, and 2011 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and SMRLS agreement of August 2, 2011, SMRLS 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.<sup>3</sup>

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<sup>3</sup> 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.

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

At the conclusion of the visit, on September 22, 2011, OCE conducted an exit conference during which SMRLS was provided with OCE's initial findings and was made aware of the areas in which compliance issues were found. OCE noted substantial compliance in the areas of 45 CFR Part 1611 (Financial eligibility policies), 45 CFR CSR § 1611.9 (Retainer Agreements), CSR Handbook (2008 Ed.), and Chapters VIII and IX (Case closure categories); non-compliance was noted with respect to compliance with 45 CFR § 1626.6 (Verification of citizenship).

By letter dated December 8, 2011, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. SMRLS was asked to review the DR and provide written comments. On December 15, 2011, SMRLS requested, and received, an extension of the due date for their response to the DR. Pursuant to the extension, SMRLS agreed to submit its response to the DR by January 31, 2012. By electronic mail dated January 27, 2012, SMRLS submitted its comments to the DR. OCE has carefully considered SMRLS's comments and has either accepted and incorporated them within the body of the report, or responded accordingly. SMRLS's comments, in their entirety, are attached to this Final Report.

In its response to the DR, SMRLS requested that all references to "Managing Attorney" be changed to "Senior Leadership or Supervising Attorney," and that all references to "Executive Director" be changed to "Chief Executive Officer." Rather than alter the text, all references to "Managing Attorney" will be understood to be a reference to "Senior Leadership or a Supervising Attorney," and all references to "Executive Director" will be understood to reference SMRLS's "Chief Executive Officer."

### **III. FINDINGS**

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

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

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

number of cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. *See* Case No. HL-07-09843. This is a closed 2010 Refugee Immigrant and Migrant Services (RIMS) St. Paul case where the SMRLS staff provided legal advice to the client, however, eventually lost contact with the client. The case file listed the closing code as “E,” (Client Withdrew), however, the closing code in the ACMS was correctly listed as “B,” Limited Action. *See also* Case No. MF-09-07582. This is a closed 2010 RIMS Fargo case where the closing code in the case file was correctly listed as “H,” Administrative Decision in the case file; however, in the ACMS the listed closing code was “L,” Extensive Service. These cases did not reflect a pattern of miscoding or misinformation.

There are no recommendations or corrective actions required.

In its response to the DR, LSEM did not offer any comment on this Finding.

**Finding 2: SMRLS’s intake procedures and case management system generally support SMRLS’s compliance related requirements. However, there were exceptions noted with respect to screening for income/asset eligibility, citizenship eligibility, and income prospects.**

The intake procedures of all SMRLS offices were assessed by interviewing the primary intake staff and the Managing Attorneys in order to ascertain SMRLS’s compliance in relation to the intake process. The interviews revealed that intake procedures performed by the intake staff generally support the program’s compliance related requirements with respect to obtaining written citizenship attestations, performing conflict and duplicate checks during the intake process, inquiring as to the applicant’s reasonable income prospects, and considering all authorized exceptions and factors when screening an applicant for income eligibility. However, exceptions were noted with respect to some intake staff members’ screening for income/asset eligibility, citizenship eligibility, and income prospects.

#### *SMRLS Rural Intake and Hotline*

Presently, SMRLS uses a de-centralized intake system and limited assistance hotline referred to as the SMRLS Rural Intake and Hotline (Hotline) to conduct intake for several of their offices. Additionally, SMRLS conducts intake in its central office. The Hotline is operated Monday through Friday from 9:00 a.m.-3:30 p.m., with an hour lunch break at noon. SMRLS uses the PIKA computerized case management system as its ACMS. There were no defaults in the essential categories. The Hotline is staffed by two (2) full-time intake staff and at least two (2) full-time attorneys provide legal assistance on the Hotline. There are back-up Hotline staff, comprised of both intake staff and attorneys, located in the SMRLS offices. The Hotline is supervised by a lead Hotline attorney, who assists callers on the Hotline. The Hotline has the capacity to serve the 28 rural counties in SMRLS’s service area.

SMRLS’s Hotline system directs each caller into a telephone-holding queue. Intake staff answers calls by order of time called. Intake staff first pre-screens the caller for income, case type/priorities, and service area. After pre-screening, intake staff screens for eligibility and

enters the client's information into the ACMS. SMRLS does not use any handwritten intake forms to conduct Hotline screening. The intake staff enters the applicant's and the adverse party's name and address, notes the applicant's demographic information, household size, and enters the household income, assets, and citizenship or other eligible alien status directly into the ACMS. If intake staff is uncertain as to the eligibility of an applicant, the critical ACMS field is left blank and the case is transferred to a Hotline attorney for further review. During this process, intake staff checks for the presence of conflicts and duplicate reporting. Additionally, the Hotline attorneys review all potential conflicts. The intake staff will briefly interview the applicant to obtain information concerning the nature of the legal problem.

After the intake is completed, the intake staff moves on to answer the next call, and transfers the call to a Hotline attorney for review and to provide legal assistance, if appropriate. The Hotline attorney reviews the intake to ensure that all of information needed for LSC compliance is recorded. The Hotline attorney determines whether the applicant satisfies the income, asset, citizenship, and priority guidelines set by SMRLS. The Hotline attorney also reviews conflicts, citizenship, income and asset eligibility, and determines whether to accept the case for immediate advice, whether to transfer the applicant to another branch office, or to transfer it to SMRLS's Volunteer Attorney Program (VAP). If the applicant is ineligible for services, the Hotline attorney will inform the applicant of their ineligibility and attempt to refer the applicant to an applicable social service program for assistance. The Hotline attorneys provide advice and brief services by telephone. Infrequently, the Hotline attorneys provide extended services for Hotline intake clients. SMRLS's practice is to obtain written citizenship/alien documentation and retainer agreements for all extended service cases.

In its response to the DR, SMRLS indicated that the case acceptance decisions are made by senior level attorneys. Additionally, SMRLS indicated that, in the Metro Region of SMRLS, "applicants with legal emergencies who walk-in outside of intake screening hours are screened for financial and case-type eligibility and seen by an attorney as soon as possible if an attorney is available."

Hotline intake staff reported that the attorneys determine income, asset, and citizenship eligibility. As such, intake staff and some management do not have experience requesting an over asset waiver and have not conducted group eligibility determinations. Additionally, both intake staff and Hotline attorneys indicated that they do not conduct group eligibility determinations, pursuant to the requirements of 45 CFR §§ 1611.6 and 1611.7, as all of the clients that are screened for eligibility are individual applicants, and they have never had an occasion to screen a group applicant.

On site review of the intake system indicated that the intake staff is consistent in their use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks, verify citizenship, and store electronic reporting data. Intake staff demonstrated familiarity with program priorities and most of the citizenship and alien eligibility requirements of 45 CFR Part 1626. Hotline attorneys generally close their cases the same day advice is provided, and the client is mailed a modified form closing letter. The lead Hotline attorney reviews a sampling of these cases every three to four months for financial eligibility and legal accuracy, and errors will be located and corrected during this process.

If the client requires further assistance or the applicant's case is a type that is handled outside of the Hotline, it will be "referred" to a SMRLS case handler or the VAP for further services. The Hotline attorney electronically transfers the intake to the appropriate person for acceptance by email. Upon acceptance of the referral, the attorney changes the responsible office and case handler codes in the ACMS. The case is electronically moved from "Hotline Hold" to the open case list. The lead Hotline attorney reviews the Hotline Hold lists every few months to ensure that the case handlers have accepted all cases and to ensure against duplicate reporting. Most cases are accepted by the volunteer attorneys whose practice is in the client's particular legal problem area, and the remaining cases are accepted through SMRLS's group case acceptance meetings. Cases are reviewed at closing and at the end of every year by the lead attorney. Review at closing is focused on financial eligibility and legal accuracy. Errors are located and corrected during this process. Oversight of the supervision of compliance related activities is performed by a senior attorney who performs quarterly quality control checks of compliance activities by generating ACMS reports for citizenship, closing codes, duplicates, income and asset amounts, timeliness, duplicates, funding codes, and data entry mistakes. If an anomaly is discovered, the file is reviewed and the error corrected.

In its response to the DR, SMRLS indicated that most extended service cases are accepted by staff attorneys and that while group acceptance meetings do occur, they are limited to conserve staff meeting time. In its response, SMRLS also specified that, in the absence of a group case acceptance meeting, senior and supervising staff will often make the case acceptance decision. Lastly, SMRLS clarified that the end of the year case review by the lead Hotline attorney is "limited in nature and only in preparation for the self-inspection where that might be warranted."

#### Walk-in or Telephone Intake Procedures

*Overview of Intake Process:* There is one (1) SMRLS office that conducts both walk-in and telephone intake screenings. The screening process for both walk-in and telephone applicants is virtually identical. Initially, an applicant may walk into the office during scheduled intake hours. A walk-in applicant is greeted by the receptionist and is provided a Walk-In Screening Sheet. The Walk-In Screening Sheet is completed manually by the applicant and obtains the applicant's background information, such as name, date of birth, household source of income, etc. Prior to initiating the intake interview, a walk-in applicant is required to verify their citizenship status. If the intake is being done over the telephone, the applicant is asked to verbally verify their citizenship or alien eligibility status. Once all screening forms are completed, the applicant is taken into a private screening room where the intake process begins. If the applicant is applying for services over the telephone, the intake screening commences when all of the information requested on the screening forms has been provided.

The screening process, which entails citizenship screening, financial eligibility screening, and a conflicts and duplicate check, is conducted using PIKA. After all eligibility screening is completed, and the applicant is deemed eligible for services, the intake documents are gathered and given to a staff attorney who usually meets with the applicant the same day. If no attorney is available to meet with the client, an appointment is made for the client to meet with the attorney as soon as possible. Intake staff interviewed indicated that the citizenship attestation is signed

during the client's initial meeting with the attorney, while in the presence of the interviewing attorney. If only brief assistance is required, the attorney will provide legal advice at the initial meeting. If the case requires extended representation, the interviewing attorney will obtain additional details and present the case at the attorney's unit's weekly case acceptance meeting. Subsequent to the case acceptance meeting, the client is informed as to whether their case will be accepted for further representation. At the conclusion of representation, the attorney will send the client a case closure letter, which outlines the results of representation, assign a closing code, and close the case in PIKA.

In the offices that primarily conduct intake through the Hotline, in person screening is rarely conducted. When it is, Hotline intake staff, PAI Coordinators, and legal secretaries will conduct the screening. In such cases, the applicant is pre-screened for income, service area and case type/priorities. A full-eligibility screening is performed directly into the ACMS, in the same manner as it is entered for Hotline calls. After the intake is complete, the intake will be provided to an attorney who will meet with the applicant (either in person or by telephone), a future appointment will be scheduled, or the applicant's request for services will be denied. Lastly, a citizenship attestation is signed, either on the PIKA printout or by separate form, or the applicant's alien status will be reviewed and verified.

In its response to the DR, SMRLS clarified that when a walk-in applicant enters an office that uses the Hotline intake system, the applicant is instructed to call the Hotline. The applicants' citizenship status is verified telephonically, and contemporaneously, an office staff person will have the applicant execute a citizenship attestation while the person is speaking with the Hotline representative.

*Reasonable Income Prospects Screening:* Pursuant to the requirements of 45 CFR § 1611.7(a) (1), some intake staff interviewed reported that proper inquiry is made into the reasonable income prospects of applicants. The specific question for reasonable income prospects is asked during the intake screening process by intake staff and the applicant's response is recorded in the notes section of the ACMS. However, the manual intake form and the ACMS do not contain fields to record an applicant's reasonable income prospects, and certain intake staff members indicated that they do not inquire into these prospects; this was confirmed during on site observations of the intake process..

*Citizenship and Eligible Alien Status Screening:* The majority of intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff reported that they verify citizenship status during intake screening and, when necessary, request documentation of eligible alien status. However, some intake staff reported that applicants are provided with access to an office and telephone to call the Hotline and apply for services, and occasionally receive legal assistance, prior to executing a written citizenship attestation or verifying their eligible alien status.

Intake staff interviewed demonstrated an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments (VAWA), with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien. However, staff expressed confusion as to

whether LSC funds may be used in these types of cases. The note on the bottom of the program's Verification of Citizenship/Alien Eligibility form indicates that LSC funds may not be used in cases where citizenship has not been established. This is contrary to Program Letter 06-2 which explained that grantees are allowed to utilize "... LSC funds to provide legal assistance to any victim covered by VAWA 2006..."

*Income Screening:* The intake staff expressed understanding that an applicant will be considered eligible if the applicant's income is under 125% of the Federal Poverty Guidelines ("FPG"). Effective July 1, 2011, SMRLS amended its financial eligibility policy to set the maximum annual ceiling at 125% of the FPG. The newly implemented policy indicated that in instances where an applicant's income exceeded 125% of the FPG, but the applicant was otherwise eligible for services and authorized income exceptions could be documented, only those cases that "shocked the conscience" or were considered "very extraordinary cases between 125 and 187.5% poverty" would be eligible for services. In such cases, the case is to be forwarded to the Executive Director to make the determination as to whether to accept or reject the case. Interviews reflected that both staff and management were unclear as to this policy. Most intake staff interviewed believed there were no exceptions to the income ceiling, and have been rejecting all cases over 125% of the FPG during the pre-screening process. However, one staff member reported that certain cases could be considered if there was an extreme hardship.

Interviews demonstrated that some intake staff are not familiar with many of SMRLS's income eligibility policies as set forth in its Client Eligibility Guidelines and Case Acceptance Policies, which was provided for review in advance of the visit. While the majority of the intake staff were familiar with the 125% of the FPG annual income ceiling set by SMRLS, some intake staff were not aware of the authorized expenses exceptions, or when the exceptions should be applied, for applicants whose household incomes exceeded 125% of the FPG. Additionally, some intake staff indicated that when they determined other significant factors existed for those applicants whose income exceeded 125% of the FPG, they do not usually document the reasons justifying the selection of the "significant other factor" exception. SMRLS's practice of recording a factor considered, with nothing more, lacks clarity. This practice will be addressed in more detail in Finding 3.

*Asset Screening:* Interviews revealed that most intake staff were familiar with the categories of assets that could be excluded by SMRLS, as well as the asset ceiling amounts. However, there were certain intake and management staff interviewed that were not familiar with all of SMRLS's asset policies as set forth in SMRLS's eligibility guidelines. For example, one management member was unable to remember the homestead equity limit and another staff member believed that the \$40,000.00 homestead equity limit was the maximum asset limit for all assets. There were some intake staff members that reported that SMRLS's personal property asset limit for a household of 2 or more was \$3000.00, when SMRLS's policy states that it is \$6,000.00. Additionally, some intake staff expressed confusion as to how a vehicle was valued. Some staff reported they would aggregate the value of multiple vehicles up to \$10,000.00 limit, and then count the remaining equity as personal property. Others reported that each vehicle was excluded up to a maximum value of \$10,000.00. There was no consideration as to whether any vehicle was used for transportation.

Lastly, a limited number intake staff were not fully aware of all of the assets that could be excluded from calculation per SMRLS's policy. For example, one staff member reported pensions were exempt assets, while another reported that pensions were non-exempt assets; similarly, some staff interviewed reported that only vehicles equipped for handicap use were exempt assets, while others reported only work related tools and equipment as excludable. SMRLS's policy indicates that the following assets are excludable from calculation: equity in a homestead that is valued at or below \$40,000.00; equity in a vehicle that is valued at or below \$10,000.00; personal property that is valued at or below \$3,000.00 for a one-person household (\$6,000.00 for a two or more person household); personal and household effects; a vehicle modified for use as a handicapped vehicle; a trust from household funds for education and medical expenses; and the fair market value of business property.

*Conflicts:* When SMRLS intake staff encounters a potential conflict of interest, the applicant is transferred to a PAI Coordinator who performs the intake. If the applicant is eligible, the PAI Coordinator accepts the applicant and will refer the person to a private attorney for services. Conflicts remain in SMRLS's database but the "office" field in the ACMS is changed to "Conflict," which limits staff access only to PAI Coordinators. SMRLS reports that this process creates a "Wall" because the PAI Coordinators are the only SMRLS employees who have access to the confidential information.

In its response to the DR, SMRLS indicated that, "where fact development and/or analysis is needed to decide whether a conflict case is a priority, it is referred to a volunteer attorney to develop the information to determine whether the case is a priority and whether there is sufficient merit." As such, PAI Coordinators do not have a significant amount of information regarding conflict cases.

*Outreach:* SMRLS conducts community education outreach regarding debt collection, consumer scams, and housing/landlord issues. It was explained that for the most part, these events are informational and that no legal advice is provided to participants. One exception, "Project Homeless Connect," was indicated, where intake screenings are conducted on site by two (2) staff attorneys. In the Project Homeless Connect outreach initiative, the two (2) staff attorneys screen for conflicts by entering the applicant and adverse party information directly into the ACMS while on site using a laptop computer. If there is no internet connection, or the attorneys are otherwise unable to enter the information into the ACMS, they contact their office by telephone so that a staff member may conduct the conflict check prior to an eligibility determination.

SMRLS also conducts outreach by staffing a few senior fairs and homeless conferences throughout the year. At these events, SMRLS performs full eligibility screenings by use of a manual intake form and the standard citizenship/alien eligibility certification form. For those cases where there is no adverse party (e.g., advising on the need for a Durable Power of Attorney), brief legal advice may be given by the attorneys while they are on site. For cases where there are adverse parties, the applicants are provided with legal information and a conflict check is done by entering the necessary information into the ACMS prior to providing the applicant with legal advice. A Managing Attorney receives an oral report concerning the outreach activity.

In its response to the DR, SMRLS indicated that conflict checks are “often done after returning to the office when doing senior fairs, homeless conferences, etc., which is now authorized by the Minnesota Rules of Professional Conflict for clinic type services where conflict checking is not practical.”

*Intake Forms:* The forms provided by SMRLS for review were the Paper Intake Form, the Walk-In Screening Form, the Citizenship and Verification of Eligible Alien Status Form, the Retainer Agreement, Authorization for Release of Information, and Opening, Closing and Rejection letters. While these forms meet basic compliance requirements, improvement can be achieved with respect to the following forms:

- The “Southern Minnesota Regional Legal Services, Inc. (“SMRLS”) Agreement for Legal Services” (May 1, 2011) states, “*The information I give to SMRLS is private. SMRLS staff will not share this information with anyone outside of SMRLS unless I agree it can be shared.*” SMRLS should take steps to ensure that this language is changed to reflect the authorization for SMRLS to release certain client information to LSC, pursuant to Section 509(h) of the 1996 LSC Appropriation (Pub. L. 104-134, 110 Stat. 1321, H.R. 3019, §509(h) (1996)). For example, the language can be modified as such, “*SMRLS is hereby authorized to give Legal Services Corporation some information about me and/or my case,*” or “*I authorize SMRLS to give Legal Services Corporation my name and any other information required by federal law.*” This language would be consistent with the need to provide certain eligibility and case information consistent with Section 509(h). SMRLS should ensure that no waiver or authorization form in use restricts its ability to comply with the required LSC access rights under Section 509(h) of the 1996 LSC Appropriation.
- SMRLS’s over-income rejection letters indicate that SMRLS included the 2010 LSC Financial Eligibility Guidelines rather than the 2011 Guidelines. If SMRLS chooses to include the Guidelines in its rejection form letters, it is recommended that it include the current Guidelines.
- The Verification of Citizenship/Alien Eligibility form is divided into three (3) separate classifications:

Citizen  
Eligible Alien  
Emergency

The third classification requires the applicant to affirm his/her belief that the necessary alien eligibility documentation will be produced. The wording suggests the applicant may be unable to provide the requested documentation or is unsure of his or her ability to provide the necessary documentation: “*I believe* I will be able to produce the document/s to verify my immigration status.” (Emphasis added) Pursuant to the requirements of 45 CFR § 1626.8 (b), the phrase “I believe” should be removed from the emergency representation form for eligible aliens so that it

reads as: I will be able to produce the document/s to verify my immigration status on or before \_\_\_\_\_.

Based on the above-referenced findings, the DR indicated that, pursuant to the requirements of 45 CFR § 1611.7, SMRLS should ensure that all computerized and manual intake forms properly screen for an applicant's reasonable income prospects.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 1 is completed and to provide this Office evidence when the action is completed.

The DR recommended that, pursuant to the requirements of 45 CFR § 1611.7, SMRLS should conduct intake staff training regarding screening all applicants for reasonable income prospects.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

The DR further indicated that, pursuant to the requirements of 45 CFR Part 1626, SMRLS must ensure that every walk-in applicant is appropriately and timely screened and a written citizenship attestation, or evidence of timely review of alien eligibility documentation, is obtained for all walk-in applicants when applicable. This action would ensure that the corrective action required in Finding 5 *infra* is accomplished.

In its response to the DR, SMRLS requested that this corrective action be combined with Required Corrective Action No. 8, since both corrective actions concern timely executed citizenship attestations. While both corrective actions reference the requirement to obtain and maintain timely executed citizenship attestations, Required Corrective Action No. 2 addresses the need for intake staff to be made aware of proper citizenship screening requirements, while Required Corrective No. 8 addresses the need for proper citizenship documentation to be contained in all case files, where applicable. As such, the corrective actions will not be combined. SMRLS is directed to ensure that Required Corrective Action No. 2 is completed and to provide this Office evidence when the action is completed.

The DR also recommended that, pursuant to the requirements of 45 CFR Part 1626, SMRLS should conduct staff training regarding the procedures for ensuring that timely executed citizenship attestations and documented alien eligibility verifications are contained in all case files, when required. This action would ensure that the corrective action required in Finding 5 *infra* is accomplished.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

The DR further directed that, pursuant to the requirements of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, SMRLS must ensure that all manual intake forms indicate that both LSC and non-LSC funds may be used to represent applicants falling under the categories outlined in 45 CFR §§ 1626.4(a)(1) and (2).

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 3 is completed and to provide this Office evidence when the action is completed.

The DR further indicated that SMRLS must ensure proper application of the over-income eligibility factors listed in 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 4 is completed and to provide this Office evidence when the action is completed.

Additionally, the DR recommended that SMRLS conduct intake staff training regarding the income eligibility policies that went into effect July 1, 2011, and the circumstances that must exist in order for a case to be forwarded to the Executive Director for acceptance, when the applicant's income exceeds 125% of the FPG.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

The DR also recommended that SMRLS conduct intake staff training regarding its asset policy and the procedures associated with determining whether the asset ceiling has been reached.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

The DR also required SMRLS to ensure that no waiver or authorization form in use restricts SMRLS's ability to comply with the required LSC access rights under Section 509(h) of the 1996 LSC Appropriation.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 5 is completed and to provide this Office evidence when the action is completed.

Additionally, the DR recommended that SMRLS utilize the most current LSC financial eligibility guidelines, if it wants to include that information in correspondence with applicants.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

The DR also directed SMRLS, pursuant to 45 CFR § 1626.8(b), to ensure that the phrase "I believe" is removed from its emergency representation form for eligible aliens, so that it reads as: I will be able to produce the document/s to verify my immigration status on or before \_\_\_\_\_.

In its response to the DR, SMRLS indicated that the language in the emergency representation form for eligible aliens was corrected during the visit and that this corrective action should be removed. However, while the clause, "Documents to be provided: \_\_\_\_\_" was added to the emergency representation form, the phrase "I believe" was not removed from the form. As

such, pursuant to the requirements of 45 CFR § 1626.8(b), SMRLS should ensure that the phrase is removed and provide this Office evidence when the action is completed.

**Finding 3: With a limited number of exceptions, sampled cases evidenced that SMRLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG). Additionally, SMRLS's income eligibility policy is compliant with 45 CFR §§ 1611.5.**

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.<sup>4</sup> *See* 45 CFR § 1611.3(c)(1) 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 (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) 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 (2008 Ed.), § 4.3.

With a limited number of exceptions, SMRLS maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. *See* Case No. CE-11-05217, which is an open case file. The case file notes indicate that the client's income was 132% of the FPG. However, there was no documentation or notation in the physical case file or in the ACMS to indicate whether any of the authorized exceptions in 45 CFR § 1611.5 were applied to the client's income to render the client financially eligible for services. *See also* Case Nos. HL-11-04657, HL-11-06608, HL 09-15606, CE 10-00342, MA 11-02783, HL 11-00890, CE 11-01203, HL-09-10817, CI-10-10723, CI-09-11187, AL-11-03134, HL-07-12232, and MF-10-

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<sup>4</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

06587, which are all CSR-reportable cases where the client's income exceeded 125% of the FPG without documentation regarding application of authorized factors.

In several of the above-referenced case files, it was noted in the case files that the client lacked an affordable alternative to private legal assistance. While on site, it was noted that it is permissible to apply the following factor to an applicant who is over-income: "other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance." 45 CFR § 1611.5(a)(4)(vii). However, it was related that if this factor is applied, there must be documentation of the significant factors that impair the applicant's ability to afford legal assistance. Pursuant to on site discussions, the Executive Director and Technology Manager revised a portion of SMRLS's ACMS to ensure that if significant factors were noted during intake, the person inputting the intake information would not be able to move to the next intake screen without identifying and documenting the applicant's specific significant factors.

While on site, it was noted that SMRLS's financial eligibility policy was substantially compliant with 45 CFR § 1611.5 and was compliant with 45 CFR § 1611.6. The SMRLS policy that was provided for review in advance of the visit indicated that SMRLS staff may provide legal assistance to a financially ineligible applicant in emergency situations. Such an exception does not exist in 45 CFR § 1611.5, which outlines factors that may be applied to an otherwise eligible applicant who is over-income. Pursuant to on site discussions with the Executive Director regarding SMRLS's financial eligibility policy, the policy was revised to remove the above-referenced exception, and the Executive Director asserted that only exceptions found in 45 CFR § 1611.5 would be listed in SMRLS's financial eligibility policy. The revised income eligibility policy was reviewed during the visit and was met with approval. The revised policy is scheduled to be reviewed and approved by the Board in December 2011.

The DR recommended that, in the event SMRLS raises its income eligibility ceiling and authorizes the application of over-income factors, SMRLS should provide staff training regarding application of the over-income eligibility factors listed in 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

**Finding 4: With two (2) exceptions, sampled cases evidenced that SMRLS maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. SMRLS's asset eligibility policy is substantially compliant with 45 CFR §§ 1611.2(d) and 1611.3(d)(1) and (e). However, as noted previously, additional training is necessary regarding application of that policy during intake screening.**

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

except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>5</sup> See 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.

There were two (2) case files reviewed that did not contain the documentation to comply with the requirements of 45 CFR § 1611.3(d)(2). See Case Nos. HL-09-05094 and HL-11-03994. The intake information documented in these cases indicated that the applicants' assets were over SMRLS's asset ceiling; however, there was no executed waiver of the asset ceiling contained in either case file.

The SMRLS asset policy that was provided for review in advance of the visit utilized the terms "liquid asset" and "non-liquid asset" in its determination of financial eligibility. While SMRLS's policy definition of "liquid asset" conformed with the definition of asset, as defined in 45 CFR § 1611.2(d), "non-liquid assets" were considered assets and are counted towards the asset ceiling. Pursuant to on site discussions with the Executive Director, the policy was revised to ensure that, pursuant to 45 CFR §§ 1611.3(d)(1) and 1611.2(d), only non-excludable assets that are both readily convertible to cash and available to the applicant would be considered when determining whether the asset ceiling has been reached. Specifically, SMRLS removed the distinction between non-liquid and liquid assets and amended the policy to reflect that only assets, as defined above, would be considered.

With respect to 45 CFR § 1611.3(d)(1) and (e), SMRLS's current financial eligibility policy indicates that the following would not be considered assets and would be exempt from all asset calculations:

*A vehicle modified for use as a handicapped vehicle, regardless of value.  
Personal and household effects.  
A trust from household funds for education and medical expenses which is not accessible for any other purpose.*

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<sup>5</sup> A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. See CSR Handbook (2008 Ed.), § 5.4.

The list of excludable assets found in 45 CFR § 1611.3(d)(1) is an exhaustive list and cannot be added to. As such, while on site, it was recommended that the exempt asset list in SMRLS's financial eligibility policy be revised to include only those items listed in 45 CFR § 1611.3(d)(1). Additionally, it was related that if an asset was deemed excludable pursuant to it being exempt from attachment per a State and/or Federal law, the policy should reflect the specific assets that are exempt, along with a recitation of whether State and/or Federal law authorizes the exemption. Pursuant to on site discussions with the Executive Director, SMRLS is in the process of revising its asset policy to list only those assets found in 45 CFR § 1611.3(d)(1).

The DR directed SMRLS to ensure that its asset policy is revised to reflect that only assets, as defined in 45 CFR § 1611.2(d), are considered when determining whether the asset ceiling has been reached.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 7 is completed and to provide this Office evidence that SMRLS's exempt asset list includes only those assets that are listed in 45 CFR § 1611.3(d)(1).

**Finding 5: SMRLS is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). There were sampled case files reviewed that did not contain a citizenship attestation. Additionally, there were a limited number of cases reviewed that contained untimely or undated citizenship attestations. Policies reviewed evidenced compliance with 45 CFR Part 1626.**

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed.), § 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.<sup>6</sup> 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

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<sup>6</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a “U” visa. LSC recipients are now allowed to include these cases in their CSRs.

Sampled cases evidenced non-compliance with the requirements of 45 CFR § 1626.6. There were a limited number of case files reviewed that did not contain citizenship attestations when required. *See* Case Nos. CE-10-13022, CE-09-11911, and CE 10-01524, which are closed 2010 case files. Although the file notes indicate that there was in person contact between the client and SMRLS in each of these cases, the case files did not contain executed citizenship attestations. *See also* Case Nos. HL-10-08647, HL-11-04470, HL-11-05790, and HL-11-04395, which are closed 2011 cases. The case file notes in these cases indicate that there was in person contact between the client and SMRLS; however, the files failed to contain an executed citizenship attestation.

There were a limited number of cases that contained untimely executed citizenship attestations. *See* Case No. CE-11-05482, which is an open case file. The citizenship attestation was dated September 14, 2011. However, the case file notes indicate that there was in person contact between the client and the program attorney on June 8, 2011. As such, the attestation was untimely, as it was executed subsequent to the in person contact. *See also* Case No. EA-11-04815, which is an open case file. The citizenship attestation was dated August 30, 2011. However, the case file notes indicate that there was in person contact between the client and the program attorney on a date prior to the date the attestation was signed by the client. As such, the citizenship attestation was untimely. It is recommended that SMRLS conduct staff training regarding the procedures for ensuring that timely executed citizenship attestations are present in all case files, when required.

There were a limited number of reviewed cases where the citizenship attestation was signed, but not dated. *See* Case Nos. HL-10-13944, an open case, and HL-11-06151, a closed case, where there has been in person contact between the client and SMRLS. Both case files contained a citizenship attestation that was signed, but not dated. *See also* Case No. AL-10-04203, which is a closed 2011 case. The case file contained copies of the applicant’s immigration status documentation, but not the date of when the applicant’s alien eligibility was verified. *See also* Case No. AL-09-00196, which is a closed 2009 case where the client failed to date citizenship attestation; therefore, timeliness could not be determined. *See also* Case Nos. CR-11-10016 and RO-09-13990, which are open cases where there has been in person contact between the client and SMRLS. Both case files contained copies of the applicant’s immigration status documentation, but not the date when the applicant’s alien eligibility was verified. It is recommended that SMRLS conduct staff training regarding the procedures for ensuring that timely documentation of an applicant’s alien eligibility is contained in all case files, when required.

SMRLS’s restrictions on legal assistance to aliens policy is in compliance with the requirements of 45 CFR Part 1626. The SMRLS policy that was provided for review in advance of the visit indicated only non-LSC funds could be used to provide legal assistance to an otherwise ineligible alien who had been battered or subjected to extreme cruelty, pursuant to 45 CFR § 1626.4, when the assistance was directly related to the prevention or relief from the battery or extreme cruelty.

While on site, it was recommended that the policy be revised to reflect that, pursuant to LSC Program Letter 06-2, both non-LSC funds and LSC funds could be used to represent clients who are the victims of battery or extreme cruelty.

Additionally, the policy that was provided in advance of the visit indicated that written citizenship attestations were not required when the only service provided was brief advice. While on site, it was recommended that the policy be revised to reflect that, pursuant to 45 CFR § 1626.6(a), written citizenship attestations would be required in all cases unless the only contact between the client and SMRLS was via telephone communication, and there was no in person contact between the client and an SMRLS employee.

Lastly, the SMRLS policy that was provided in advance of the visit indicated that ineligible aliens could be provided legal assistance in emergency situations, if the client signs a document indicating that eligibility documents would be produced at a later date. While on site, it was recommended that the policy be revised to reflect that, pursuant to 45 CFR § 1626.8, legal assistance can be rendered in the following emergency situations:

- a. The applicant is unable to come to a SMRLS office prior to the commencement of the representation and provides oral information to establish citizenship/alien eligibility, the eligibility information is recorded, and the applicant provides the necessary documentation as soon as possible, or
- b. The applicant cannot produce the required documentation prior to the start of representation and signs a statement of eligibility that states that the necessary documentation will be provided as soon as possible.

The above-referenced recommended revisions to SMRLS's citizenship/alien eligibility policy were completed and reviewed while on site. Pursuant to on site discussion with the Executive Director, the policy was revised to reflect that both non-LSC funds and LSC funds can be used to represent victims of battery or extreme cruelty; that written citizenship attestations are required in all cases where there is in person contact between the applicant and a program employee; and that emergency representation of eligible applicants can only be provided when the conditions of 45 CFR § 1626.8 have been met. The revised policy was met with approval and is compliant with the requirements of 45 CFR Part 1626. The revised policy is scheduled to be reviewed and approved by the Board in December 2011.

In conjunction with the findings relating to 45 CFR Part 1626 that were discussed in Finding 2 *supra*, the DR directed SMRLS to ensure that all case files contain timely executed written citizenship attestations, or verifications of alien eligibility, pursuant to 45 CFR Part 1626 and CSR Handbook (2008 Ed.), § 5.5, where appropriate.

In its response to the DR, SMRLS requested that this corrective action be combined with Required Corrective Action No. 2, since both corrective actions concern timely executed citizenship attestations. While both corrective actions reference the requirement to obtain and maintain timely executed citizenship attestations, Required Corrective Action No. 2 addresses the need for intake staff to be made aware of proper citizenship screening requirements, while Required Corrective Action No. 8 addresses the need for proper citizenship documentation to be

contained in all case files, where applicable. As such, the corrective actions will not be combined. SMRLS is directed to ensure that Required Corrective Action No. 8 is completed and to provide this Office evidence when the action is completed.

**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.<sup>7</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Case files reviewed indicated that SMRLS is in substantial compliance with the requirements of 45 CFR § 1611.9. There were a limited number of case files reviewed that contained a retainer agreement with an inadequate scope and/or subject matter. *See* Case No. CI-09-13814. This is a closed 2010 RIMS St. Paul case that was closed with the closing code "H," Administrative Decision, in which the retainer agreement had no scope or subject matter documented. *See also* Case No. SH-08-11200. This is a closed 2010 Shakopee case that was closed with the closing code "I(c)," Court Decision: Appeals, in which the retainer agreement states the subject matter of the case as public assistance. However, the agreement fails to state the agreed upon services that SMRLS would provide to the client. Additionally, the retainer appeared to be from a previous case, as the date on the agreement was prior to this case being opened. *See also* Case Nos. MF 04-07241 and MF 04-07242, which are case files that were required to have a retainer agreement, due to their being extended service cases. However, the retainer agreements included in the case files did not clearly identify the scope and/or subject matter of the representation. *See also* Case No. AL-09-14964, which is a closed 2010 case that was closed with the closing code "H," Administrative Decision. The file notes in this case indicate that the retainer agreement was executed subsequent to a hearing where the client was represented by a program attorney. As such, the retainer agreement was untimely executed.

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

In its response to the DR, SMRLS did not offer a comment on this recommendation.

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<sup>7</sup> 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 SMRLS is in compliance with the requirements of 45 CFR Part 1636.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

Prior to the visit, OCE was provided a list of SMRLS's priorities. SMRLS identifies the following types of cases as within their priorities: income maintenance, education, medical care and services, family, and consumer complaints. Sampled case files reviewed evidenced that SMRLS is in compliance with 45 CFR Part 1620.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

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

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

Case files reviewed indicated that SMRLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). There were a limited number of cases reviewed that did not contain documentation of legal advice. *See* Case No. CE-10-03332, which is a closed 2010 case. This case was closed under closing code “A,” Counsel and Advice; however, there was no legal advice documented in the case file. *See also* Case No. HL-10-14762, which is a closed 2010 case that was closed under closing code “B,” Limited Action. In this case, the client was provided only with information about housing resources in the county; there was no documentation in the case file of any specific legal advice provided. *See also* Case No. AL-09-01205, which is a closed 2009 case that was closed under closing code “A,” Counsel and Advice. In this case, the client sought legal assistance with respect to a family law issue. However, there was no documentation in the case file regarding any specific or individualized advice provided to the client relating to the client’s legal issue. Therefore, these cases, and others like them, should not have been reported in CSR data.

In the DR, it was recommended that SMRLS provide staff training regarding the necessity for all case files to contain a description of the legal assistance provided to the client.

In its response to the DR, SMRLS did not offer any comment on this recommendation.

**Finding 10: Sampled cases evidenced that SMRLS’s application of the CSR case closure categories is consistent with 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 (2008 Ed.), § 6.1.

The files reviewed demonstrated SMRLS's application of the CSR case closing categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.), in that a very small number of the sampled cases reviewed contained closing code errors. However, there were cases reviewed that contained incorrect closing codes. Case files review revealed that many of the cases with closing code errors improperly utilized closing code "K," Other.

*See* Case No. MA-10-05224. This is a closed 2010 Worthington case that was closed utilizing the closing code "B," Limited Action. The attorney provided the client with advice and then referred the case to an outside agency. As such, the applicable closing code for this case is "A," Counsel and Advice. *See also* Case No. HL-10-02858. This is a closed 2010 Worthington case that was closed utilizing the closing code "B," Limited Action. The attorney provided the client with advice and then referred the case to an outside agency. The more applicable closing code for this case is "A," Counsel and Advice. *See also* Case No. HL-10-04025. This is a closed 2010 Worthington case that was closed utilizing the closing code "L," Extensive Service. The attorney provided legal advice and contacted the client's landlord to remedy a mold problem in the apartment unit the client was renting. Through negotiations, the landlord agreed to move the client into a different rental unit. As such, the more applicable closing code for this case is "F," Negotiated Settlement without Litigation. *See also* Case No. CL-09-00296. This is a closed 2010 RIMS St. Paul case that was closed utilizing the closing code "K," Other. The attorney provided the client advice and contacted the Immigration Department requesting documentation on the client's behalf. As such, the applicable closing code in this case is "B," Limited Action. *See also* Case No. CI-09-10109. This is a closed 2010 RIMS St. Paul case that was closed with the closing code "K," Other. The paralegal filed paperwork for an administrative hearing on the client's behalf but then the client decided not to go forward with the case. As such, the more applicable closing code is "L," Extensive Service. *See also* Case No. MA-08-15553. This is a closed 2009 ELAP St. Paul case that was closed utilizing the closing code "K," Other. The attorney negotiated with the local school board to have the client's son readmitted to school. The school consented to the negotiated settlement; however, the client never returned. The applicable closing code for this case is "L," Extensive Service. *See also* Case No. MF-10-06913. This is a closed 2010 RIMS Fargo case that was closed utilizing the closing code "K," Other. The notes in the file indicate the SMRLS attorney did extensive work on the client's behalf by negotiating with the client's landlord. Prior to an agreement being reached the client moved and withdrew from the case. As such, closing code "L," Extensive Service is the more applicable closing code.

*See also* Case No. CE-06-09496. This is a closed 2009 PAI case that was opened August 7, 2006 and closed March 29, 2009, utilizing closing code "K," Other. The case notes revealed that on March 29, 2007, an Answer was filed. At some point during representation, the client stopped communicating with the attorney and on December 7, 2007, an Order of Dismissal was issued. Although the case notes were unclear as to the ultimate disposition of this case, the more appropriate closing code is closing code "B," Limited Action, as closing code "K" is reserved for cases that do not fit into any of the other closing code classifications. *See also* Case No. CE-09-11911. This is a closed 2010 PAI case that was opened September 16, 2009 and closed October

29, 2010, utilizing closing code “K,” Other. The case notes revealed that the client was advised regarding an estate matter. Therefore, the more appropriate closing code is closing code “A,” Counsel and Advice, as closing code “K” is reserved for cases that do not fit into any of the other closing code classifications. This case was also cited in Finding 5 *supra*<sup>8</sup>. *See also* Case No. CE-09-07356. This is a closed 2010 PAI case that was opened June 12, 2009 and closed July 19, 2010, utilizing closing code “K,” Other. The case notes revealed that a default judgment was obtained July 2, 2010. Therefore, the more appropriate closing code is closing code “I(a),” Court Decision: Uncontested, as closing code “K” is reserved for cases that do not fit into any of the other closing code classifications. *See also* Case No. HL-06-07588. This is a closed 2009 case that was opened June 26, 2006 and closed November 23, 2009, utilizing closing code “K,” Other. The case notes revealed that a divorce hearing was held February 3, 2009, where the opposing party failed to appear, and on March 2, 2009, the divorce was granted. Therefore, the more appropriate closing code is closing code “I(a),” Court Decision: Uncontested, as closing code “K” is reserved for cases that do not fit into any of the other closing code classifications. *See also* Case No. SH-09-10473. This is a closed 2009 case that was opened August 18, 2009 and closed November 18, 2009, utilizing closing code “K,” Other. The case notes revealed that the client wanted to appeal her denial of a daycare license. The attorney conducted research in order to determine if an appeal was viable and the likelihood of success. Based on the research, the client was advised as to the merits of an appeal. Therefore, the more appropriate closing code is closing code “L,” Extensive Service, as closing code “K” is reserved for cases that do not fit into any of the other closing code classifications).

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

In its response to the DR, SMRLS did not offer any comment on this recommendation.

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).<sup>9</sup> There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the

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<sup>8</sup> This case was noted in Finding 5 for failing to contain an executed citizenship attestation in the case file.

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

recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

Sampled cases reviewed evidenced that SMRLS is in compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

When a recipient provides more than one (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.2.

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

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

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

**Finding 13: Review of SMRLS's policies, the list of attorneys who have engaged in the outside practice of law, and staff interviews revealed that SMRLS 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 interviews with the Executive Director, two (2) members of SMRLS's Senior Leadership Team, and three (3) of the four (4) attorneys on the list provided by SMRLS who have engaged in outside practice of law<sup>10</sup>, review of the recipient's policies, and staff interviews, SMRLS is in compliance with the requirements of 45 CFR Part 1604.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

The limited review of various accounting files and supporting documentation for the period of January 1, 2009 through August 15, 2011, as well as interviews with the controller and two of SMRLS's bookkeepers, revealed that SMRLS does not appear to have expended any grant funds, or used personnel or equipment in prohibited political activities in violation of 45 CFR Sections 1608.3(b) and 1608.4(b) and therefore, is in compliance.

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

Sampled files reviewed, interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies indicate that SMRLS is not involved in such activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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<sup>10</sup> The remaining attorney on the list of attorneys who have engaged in outside practice of law was out on medical leave for the duration of the visit. As such, this person was not able to be interviewed; however, the Executive Director was interviewed regarding this attorney's outside practice of law and no compliance issues were noted.

**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 files reviewed, interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

**Finding 16: A limited review of SMRLS's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities. SMRLS's donation acceptance letter complies with 45 CFR Part 1610.5(a).**

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

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

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

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

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

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

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

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

A limited review of SMRLS's accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity), with respect to sharing physical space with a non-LSC entity engaged in restricted activities.

From a limited review of the chart of accounts and detailed general ledger (G/L) for specific G/L accounts for 2009 through June 2011, and observations of the physical locations of all offices by team members, and from interviews with staff, SMRLS does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues. SMRLS does not have contracts with other organizations to provide personnel, accounting, information technology and other support services that would require compliance with the LSC 45 CFR Part 1610.

LSC regulation 45 CFR § 1610.5(a) provides that "...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."

Upon request, a list was generated by SMRLS showing all contributions received by SMRLS in an amount equaling or exceeding \$250.00 for the years 2009, 2010, and to date in 2011. To satisfy the requirements of 45 CFR § 1610.5(a), it was related that it is SMRLS's current procedure to send out a thank-you letter to those donors whose contributions meet or exceed \$250.00. Upon review of the donor thank-you letter, it was determined that the letter lacked the specific language outlining the conditions and prohibitions that govern contributed funds. Specifically, the letter did not mention that the funds may not be used in any manner inconsistent with the Legal Services Corporation Act or § 504 of Public Law 104-134.

While on site, the required language to be included in the donation acceptance letter was discussed with the Executive Director. Pursuant to the on site discussions, SMRLS's donation acceptance letter was revised to include the language required by 45 CFR § 1610.5(a); the revised letter was reviewed and was met with approval during the visit. As such, SMRLS's donation acceptance letter for contributions that meet or exceed \$250.00 is now compliant with the requirements of 45 CFR § 1610.5(a).

The review also revealed that in 2010 and 2011, the United Way Campaign made a lump-sum contribution to SMRLS without providing specific information as to who the individual donors were and how much money the individual donors had given that comprised the lump-sum donation. While on site, it was related that in order to achieve greater transparency, as well as satisfy the requirements of 45 CFR § 1610.5(a), SMRLS should ask for more detail about the individual donors when a lump-sum donation is received. This information should include the dollar amount pledged and/or paid by the individual donor, as well as their contact information, so that those who gave \$250.00 or more can receive a thank-you letter from the program.

The DR recommended that SMRLS ask for donor information for all lump-sum donations received from United Way, so that individual donors of \$250.00 or more may be sent the required LSC disclosures, pursuant to 45 CFR § 1610.5(a).

In its response to the DR, SMRLS did not offer a comment on this recommendation.

**Finding 17: SMRLS is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. Additionally, SMRLS is in compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients.**

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).

SMRLS is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases, and is in compliance 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Review of the PAI schedule disclosed in the Audited Financial Statements for Fiscal Year Ending March 31, 2010, determined that SMRLS is in compliance with 45 CFR Part 1614.

SMRLS's PAI Volunteer Attorney Program (VAP) consists of two (2) components: a panel of individual volunteer attorneys and law firms whose attorneys are interested in *pro bono* work. Each component is supervised by a different SMRLS staff member and, as such, will be

discussed separately. The majority of SMRLS's PAI cases primarily deal with family law, housing, garnishment, and immigration matters (naturalization proceedings).

SMRLS provides diverse opportunities for *pro bono* attorneys to volunteer, such as case handling, leading community education seminars and events, participation in legal advice clinics, and coordinating with the local bar associations, legal aid providers, private attorneys, and attorneys in corporate legal departments to conduct *pro se* document preparation. Clinics are held every other month in the cities of Worthington, Mankato, Winona, Owatonna, and Rochester. These bi-monthly clinics are Self-Help Divorce Clinics. Additionally, SMRLS also conducts annual clinics, where assistance is provided in other substantive areas.

Interviews with management and staff evidenced that the PAI coordinators operate separate *pro bono* programs, but cooperate to provide a full array of *pro bono* services to their client communities. There are five (5) PAI coordinators that handle different geographic regions within SMRLS. There is one (1) PAI coordinator in the Mankato office that coordinates the PAI cases for the Mankato and Albert Lea offices. The Managing Attorney of the Mankato office supervises the PAI coordinator and all of the PAI cases originating from that office. Additionally, there is one (1) PAI coordinator located in the Winona office that coordinates the PAI cases for the Winona, Rochester, and Worthington offices. The Managing Attorney of the Winona office supervises the PAI coordinator and all of the PAI cases originating from that office. The remaining three (3) PAI coordinators are located in the St. Paul central office and handle cases for the St. Paul, RIMS, and Eastside offices. These coordinators are supervised by two Managing Attorneys, who are located in the St. Paul office. The Managing Attorneys in the St. Paul office oversee all of the PAI cases that are originated from that office, as well as supervise the PAI coordinators. All of SMRLS's PAI coordinators concentrate on placing cases with private attorneys for individualized assistance, placing clinic cases, and placing cases with individual attorneys within participating law firms. This has resulted in each office developing its own approaches to refer and place cases. Moreover, while all of the above-referenced offices have similar systems in place to periodically track the volunteer's progress on cases, and use similar case tracking forms and letters, the oversight process in each office varies somewhat. The lack of similarity in oversight procedures has not affected the quality of the services provided as each program is strong and each coordinator provides effective follow-up and oversight of PAI cases.

In its response to the DR, SMRLS clarified the VAP staffing, explaining:

“There are 2 part time (85% each) coordinators handling matters in the 28 counties of the SMRLS Southwest and Southeast regions, one in Mankato and one in Winona. The Mankato coordinator places cases in the 21 counties west of Rochester. The Winona coordinator places cases in the 7 eastern counties and coordinates the Self Help Divorce Clinics provided throughout the 28 county area. A Senior Leadership Attorney in Mankato supervises both coordinators and the PAI cases originating in both regions. There are 3 part time coordinators for the 5 county metro region located in the St. Paul Central Office and handle cases for the St. Paul, RIMS, and Eastside offices. These coordinators are supervised by a Senior Leadership Attorney located in the St. Paul

Central Office, who oversees all of the PAI cases originating from those offices and he supervises those coordinators.”

*Intake Process:* The intake process for a PAI case is identical to the intake process for a staff case, which was discussed herein in Finding 2 *supra*. Once a case is referred to the VAP, it is assigned to a specific coordinator and the PAI coordinator reviews the intake for accuracy, to ensure that all of the critical fields are complete (income, assets, citizenship screening), and to ensure that there is complete information concerning the applicant, the adverse party, and the nature of the case. The PAI coordinator will then contact the applicant and conduct an interview to determine suitability for referral to a private attorney or clinic placement.

*Brief Services Referral Process:* If an applicant is accepted for referral to the VAP, and the case is one that can be resolved through brief services, the client will be scheduled to receive advice from a participating attorney at a designated place and time. Coordinators interviewed indicated that on one evening per week, private attorneys are scheduled to come into a specific SMRLS office in order to provide legal assistance to clients. Generally, brief service cases that fall within SMRLS’s priorities are scheduled for this program. There are currently 506 attorneys who have agreed to participate in providing legal assistance in this manner, although not all of the attorneys are actively participating. Attorneys commit to volunteering at least two evenings a year, though they may choose to do more than the minimum.

*Direct Placement Referral Process for Extended Services Cases:* If the applicant is accepted for referral to a private attorney for services, cases are placed by the responsible coordinator via telephone calls and email. Cases usually can be placed by the responsible coordinator within three to five calls to *pro bono* attorneys. Generally, extended service cases that are within SMRLS’s priorities and cannot be placed within five contact attempts to private attorneys are placed on the waiting list, in chronological order, and continuous attempts are made to refer the case to a private attorney, based on the attorney’s reported interest in specific types of cases. Once the coordinator confirms that an attorney is available, the case is removed from the waiting list and the coordinator sends a referral packet to the attorney, which includes the retainer agreement, an unexecuted citizenship attestation form (if the applicant did not come to the office), a closing memorandum, a case closure form, client documents, and a completed intake sheet.

Once their case has been accepted by a participating private attorney, the client is sent an introduction letter explaining the process and the *pro bono* arrangement. The responsible PAI coordinator then calls the client and the client is instructed to contact the attorney. If the client does not contact the private attorney and ceases communication with the coordinator, the coordinator will review the case closure form to determine if any assistance was provided. The case will be de-selected if no assistance was provided; if assistance was provided, the case will be closed as a staff or PAI case, depending upon which case handler provided the legal assistance. If the private attorney fails to remain in contact with the client, every effort will be made to secure another private attorney for the client.

*Referral Process for Divorce Clinics:* SMRLS’s VAP conducts divorce clinics on a monthly basis. If the client is accepted for a divorce clinic, they are sent a scheduling letter, a divorce

questionnaire, a list of items to bring to the clinic, and a citizenship eligibility form to sign. If the client fails to bring the required documentation, the client is refused participation in the clinic. During the clinic, a participating private attorney helps participants prepare extensive pleadings required to obtain dissolutions in the state of Minnesota. The private attorney provides individualized legal assistance to the participants by answering their legal questions and reviewing their documents. The PAI coordinator will notarize the pleadings, and file them with the court on the client's behalf. Service on the adverse party is also arranged by the responsible PAI coordinator.

*Law Firms Referral Process:* The volunteer law firms participating in SMRLS's VAP have previously indicated the types of cases that they are willing to accept; this information is retained by all of SMRLS's PAI coordinators. If a case appears to be one that fits a volunteer law firm's criteria, the responsible PAI coordinator will draft a brief narrative of the case that omits any confidential case information. The narrative is sent to the law firm(s) and "walked around" in order to determine if there are any attorneys willing to accept the case. Once there is an interest, the coordinator sends a conflicts memorandum so that the law firm may check for potential conflicts with undertaking the representation. If the case is accepted, the assigned coordinator then forwards the closing memorandum form, intake sheet, and retainer agreement to the responsible attorney at the law firm. If the client has not come into a SMRLS office, the coordinator also sends the attorney an un-signed citizenship attestation/alien eligibility form, with instructions for the client to execute the form during the first meeting with the private attorney. If the case is not accepted, the coordinator makes further attempts to place the case.

*Oversight:* Once a case has been placed within the VAP, the case is scheduled for status checks. During the on site review, the PAI coordinator in the Mankato office indicated that status checks are performed bi-weekly, while the PAI coordinator in Winona indicated that status checks are performed monthly. The PAI coordinators in the St. Paul central office indicated that status checks are performed on an as-needed basis, with updates being provided no less than once per quarter. In all offices, the responsible PAI coordinator telephones and/or emails the attorney to find out the status of the case, or check the online case records to update the case file. The responsible PAI coordinator may also contact the client to determine the status of the case. All coordinators interviewed indicated that if they are unable to determine the status of the case, the case will be closed based upon the information in the file. Once the coordinator has determined that a case should be closed, either due to inactivity or resolution of the client's case, a case closure form is then sent to the private attorney. However, this form often does not elicit from the private attorney sufficient information concerning the legal assistance provided; as a result, this information is obtained directly from the private attorney by telephone call or email message. The private attorney may also return a completed closing memorandum, indicating the case outcome. Lastly, the attorney is asked to send, by electronic mail, the executed citizenship attestation or alien eligibility form.

In its response to the DR, SMRLS indicated that the PAI coordinators in the Mankato and Winona offices both conduct quarterly status checks.

Once the final closing information is obtained, the PAI coordinator will enter the case information into the ACMS, review and ready the case for closing, assign a closing code, prepare

a closing letter for the client and private attorney, and file the case. The Managing Attorney will review the electronic file, which will include the scanned citizenship form, court orders or other documents evidencing legal assistance provided, the case disposition form, and the closing code assignment. Every file is reviewed prior to closing; with the exception of divorce clinic files, which are reviewed after closing.

For divorce clinic cases, oversight is conducted by performing status checks every two weeks by reviewing Minnesota's electronic Case Information System ("MNCIS") until a final court date is scheduled. This date is noted in the file and a status check is scheduled for 2 days after the court hearing date. At the conclusion of the proceeding, the MNCIS docket is printed to evidence the legal work and support the closing code. A copy of the order or other evidence of legal work may be obtained and placed in the file. The client is then provided with a closing letter. The PAI coordinator prepares the file for closing, selects the closing code, and an attorney reviews the electronic file prior to closing. The electronic file contains a scanned copy of the citizenship and eligible alien status documentation, the closing form, and the MNCIS record and/or court order or other documentation supporting the closing code. The clinics have a 95% completion rate.

All components of the PAI program are generally well functioning, however slight improvements are recommended in order to ensure that PAI case oversight is conducted in a more routine manner.

There were a limited number of dormant PAI case files. *See* Case No. CE-07-15133, which is an open PAI case file that was opened on December 1, 2007. The case notes indicated that the PAI attorney could not be located and there is no documentation of legal assistance in the case file. As such, this is a dormant case file and SMRLS should contact the client to ensure that assistance is no longer required and then close the file in such a manner that it will not be included in SMRLS's future CSR data reporting. *See also*, Case No. CE-07-12565, which is an open case file that was opened on October 3, 2007. The ACMS indicated that this file remains open and active; however, the case notes indicated that this file should have been closed on or before December 30, 2008. As such, this is a dormant case file that should be closed in such a manner as to not be included in SMRLS's future CSR data reporting.

There were a limited number of untimely closed PAI case files. *See* Case No. CE-06-09496. This is a closed 2009 PAI case file that was opened August 7, 2006 and closed March 29, 2009, utilizing closing code "K," Other. The case notes indicated that an Answer was filed on March 29, 2007, that the client at some point stopped communicating with the attorney, and that an Order of Dismissal was issued or drafted on December 5, 2007. As this was the last entry of legal activity in the case file, the case should have been closed on or before December 31, 2008<sup>11</sup>. *See also* Case No. CO-08-01147, which is a closed 2011 case. This file was opened on January 25, 2008, and closed on February 4, 2011, with a closing code of "K," Other. The intermediary and case notes indicated that all activity ceased in this case file on November 5, 2008, with no recent legal activity prior to closing and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing. As such, this file should have been closed on or before December 31, 2009. *See also*

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<sup>11</sup> This case was also cited in Finding 10 as having been closed with an incorrect closing code.

Case No. HL-08-06751, which is a closed 2010 case. This file was opened on June 2, 2008, and closed on August 25, 2010, with a closing code of “L,” Extensive Services. The intermediary and case notes indicated that all activity ceased in this case file on October 2, 2008, with no recent legal activity prior to case closure and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing date. As such, this case should have been closed on or before December 31, 2009. *See also* Case No. HL-07-12701, which is a closed 2010 case. This file was opened on October 8, 2007, and closed on August 25, 2010, with a closing code of “K,” Other.” The case notes indicated that all activity ceased in this case file on November 5, 2007, with no recent legal activity prior to case closure and no documented activity in the file regarding future legal assistance pending or needed between last advice/service provided and closing. As such, this case should have been closed on or before December 31, 2008. None of the untimely closed cases should have been reported in SMRLS’s CSR data reports.

The DR recommended that SMRLS obtain an executed citizenship attestation or alien eligibility form from each applicant prior to referral to a *pro bono* attorney, in order to minimize instances of missing documentation.

In its response to the DR, SMRLS indicated that it “generally gets an executed citizenship attestation prior to referral to the volunteer attorney except where exigent circumstances prevent it from doing so.”

In the DR, it was recommended that SMRLS conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure that all PAI cases are timely closed, only timely closed cases are reported to LSC, and that all case information relating to the provision of legal assistance is included in each file.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

**Finding 18: SMRLS is in compliance with 45 CFR § 1627.4(a), which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization. Policies reviewed evidenced compliance with 45 CFR § 1627.4(a).**

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.<sup>12</sup> Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and

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<sup>12</sup> Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient’s legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. See 45 CFR §§ 1627.2(b)(1) and (b)(2).

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

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

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

Interviews with the controller and two (2) of SMRLS's bookkeepers indicated that non-mandatory membership fees or dues are paid with non-LSC funds. This verbal assurance was corroborated with supporting documentation. The review of the vendor list, as well as the sub-ledger accounts entitled "NLADA" and "NLADA Service Corporation," indicated that the program uses "17-00 funds" to pay for non-mandatory membership fees or dues to private or non-profit organizations. Per the list of funding codes, "17-00 funds" are state funds entitled Minnesota Filing Fee Surcharge. With regard to subgrants, SMRLS has no subgrant relationships using LSC funds. The review of accounting records did not reveal any subgrants.

The SMRLS policy on subgrants, fees and dues that was provided in advance of the on site review indicated that no fees or dues to any private or nonprofit organization could be paid with LSC funds. While on site, it was noted that, while not required, the policy could be revised to reflect that pursuant to 45 CFR § 1627.4(b), the payment of membership fees or dues mandated by a governmental organization to engage in a profession may be paid with LSC funds. Pursuant to the on site discussions with the Executive Director, the policy was revised to reflect that certain membership fees and dues can be paid with LSC funds and was met with approval. As such, SMRLS's policy is now in compliance with 45 CFR § 1627.4(a). The revised policy is scheduled to be reviewed and approved by the Board in December 2011.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

**Finding 19: SMRLS 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. *See* 45 CFR § 1635.1.

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

A review of five (5) SMRLS attorneys' and paralegals' timekeeping records was conducted. The attorneys and paralegals were selected from SMRLS offices for the pay period ending August 15, 2011, and it was determined that the records are electronically and contemporaneously kept. The time spent on each case, matter, or supporting activity is accurately recorded in compliance with 45 CFR § 1635.3(b) and (c).

SMRLS is in compliance with 45 CFR § 1635.3(d). It is not required to maintain a file of corresponding Quarterly Certifications for Part-time Case Handlers, since such part time case handlers do not work for organizations that engage in restricted activities, as identified in 45 CFR § 1635.3(d).

A review was conducted of 15 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported as compared to the amount of work performed as disclosed in the case file. The review disclosed that both records compared favorably.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.<sup>13</sup> However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter10-1 (February 18, 2010).<sup>14</sup>

A limited review of SMRLS's fiscal records, the 2009 and 2010 Audited Financial Statements (AFS), and interviews with Financial Administrator, evidenced that there were no attorneys' fees awarded, collected, and retained for cases serviced directly by SMRLS that would violate 45 CFR Part 1642.

The sampled files reviewed did not contain a prayer for attorneys' fees, as such SMRLS is in compliance with the requirements of 45 CFR Part 1642. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies, further collaborated this finding.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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<sup>13</sup> 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).

<sup>14</sup> Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

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

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. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies and fiscal records, further collaborated this finding.

The SMRLS policy on legislative and administrative advocacy that was provided in advance of the on site visit provided one of the permissible activities that could be undertaken without violating 45 CFR Part 1612. While on site, it was recommended that the policy be revised to include all permissible activities, as identified in 45 CFR § 1612.5, with an indication that the permissible activities could be performed using both LSC or non-LSC funds. Additionally, the prior policy indicated that non-LSC funds could be used to respond to a request from an agency or its staff. While on site, it was recommended that the policy be revised to indicate that non-LSC funds could be used to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof. Pursuant to on site discussions with the Executive Director, the recommended revisions to the policy were made and submitted prior to conclusion of the visit. The revised policy was met with approval and is in compliance with the requirements of 45 CFR Part 1612. The revised policy is scheduled to be reviewed and approved by the Board in December 2011.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies, also confirmed that SMRLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define "initiating or participating in any class action" as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).<sup>15</sup>

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies and fiscal records, also confirmed that SMRLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

None of the sampled files reviewed revealed participation in litigation related to redistricting. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies and fiscal records, also confirmed that SMRLS is not involved in this prohibited activity.

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<sup>15</sup> It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

None of the sampled files reviewed involved defense of any such eviction proceeding. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies, also confirmed that SMRLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies, further collaborated this finding.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

**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.<sup>16</sup> This restriction has been contained in all subsequent appropriations acts.<sup>17</sup> 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. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies and fiscal records, also confirmed that SMRLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

None of the sampled files reviewed involved such activity. Interviews with the Executive Director and two (2) members of SMRLS's Senior Leadership Team, and review of the recipient's policies also confirmed that SMRLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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<sup>16</sup> *See* Section 504(a)(18).

<sup>17</sup> *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 with the Executive Director and two (2) members of SMRLS's Senior Leadership Team further evidenced and confirmed that SMRLS was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

Interviews with the Executive Director evidenced that SMRLS is in compliance with the requirements of 45 CFR § 1620.6, which requires staff who handle cases or matters, or make case acceptance decision, to sign written agreements indicating they have read and are familiar with the recipient's priorities, have read and are familiar with the definition of an emergency situation and procedures for dealing with an emergency, and will not undertake any case or matter for the recipient that is not a priority or an emergency. The Executive Director provided the signed agreements for review during the on site visit.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

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

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

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

The SMRLS policy on case disclosure that was provided in advance of the visit did not include the requirement to provide the court case number when presented with a valid request for disclosure. While on site, it was recommended that the court case number be included in SMRLS's policy as an item to be disclosed. Pursuant to on site discussions with the Executive Director, the policy was revised to reflect as such and was met with approval prior to conclusion of the visit. As such, the policy is now compliant with the requirements of 45 CFR Part 1644. The revised policy is scheduled to be reviewed and approved by the Board in December 2011.

There are no recommendations or corrective actions required.

In its response to the DR, SMRLS did not offer a comment on this Finding.

**Finding 32: A limited review of SMRLS's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to Chapter 3- the Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2. However, the client trust accounts reconciliations lacked signatures and dates, which are necessary to establish review and approval by management.**

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

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

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

The completed Internal Control Worksheet revealed a well thought-out process for the administration of internal controls across all aspects of the SMRLS organization. While on site, it was noted that for an organization with an annual budget in excess of \$9,000,000.00, it is impressive that only three (3) individuals are responsible for any and all accounting functions.

The bank account reconciliations for the SMRLS bank accounts were reviewed during the visit. All reconciliations were performed timely and accurately. However, while the operating bank account was reviewed and approved by management, which was indicated by signatures and dates of the review and approval, the client trust accounts reconciliations lacked signatures and dates to indicate such review and approval by management, as required by the Accounting Guide for LSC Recipients Section 3-5.2(d).

The DR instructed SMRLS that, pursuant to the Accounting Guide for LSC Recipients Section 3-5.2(d) (2010 Ed.), it must ensure that the bank reconciliation performed for the client trust accounts will have the signatures of the reviewer affixed, as well as the date of the review, to indicate that review and approval was properly made by management.

In its response to the DR, SMRLS indicated that it agreed with this Finding and corrective action. It stated that, “its procedures for the reconciliation of bank and investment accounts have been amended to clearly state that the reviewer will sign and date all bank account reconciliations.” Additionally, SMRLS indicated that the reconciliation instructions have been updated with the signature and date requirement and that SMRLS’s internal control testing procedures have been updated to require that all reviewed bank accounts be validated by the person reviewing and approving the bank reconciliations (including client trust accounts). The validation of the reviewer now indicates that the reviewer has signed and dated the reconciliation form. Lastly, SMRLS indicated that “sampling for compliance” is not allowed for bank account reconciliations.

#### IV. RECOMMENDATIONS<sup>18</sup>

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

1. Pursuant to the requirements of 45 CFR § 1611.7, it is recommended that SMRLS conduct intake staff training regarding screening all applicants for reasonable income prospects.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

2. Pursuant to the requirements of 45 CFR Part 1626, it is recommended that SMRLS conduct staff training regarding the procedures for ensuring that timely executed citizenship attestations and documented alien eligibility verifications are contained in all case files, when required. This action will ensure that the corrective action required in Finding 5 *supra* will be accomplished.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

3. It is recommended that SMRLS conduct intake staff training regarding the income eligibility policies that went into effect July 1, 2011, and the circumstances that must exist in order for a case to be forwarded to the Executive Director for acceptance, when the applicant's income exceeds 125% of the FPG.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

4. It is recommended that SMRLS conduct intake staff training regarding its asset policy and the procedures associated with determining whether the asset ceiling has been reached.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

5. It is recommended that SMRLS utilize the most current LSC financial eligibility guidelines, if it wants to include that information in correspondence with applicants.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

6. In the event that SMRLS raises its income eligibility ceiling and authorizes the application of over-income factors, it is recommended that SMRLS provide staff training regarding application of the over-income eligibility factors listed in 45 CFR § 1611.5 and

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<sup>18</sup> 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.

the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

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

In its response to the DR, SMRLS did not offer a comment on this recommendation.

8. It is recommended that SMRLS provide staff training regarding the necessity for all case files to contain a description of the legal assistance provided to the client.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

9. It is recommended that SMRLS conduct staff training to ensure proper application of the CSR case closure categories, specifically with respect to utilization of closing code “K,” Other.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

10. It is recommended that SMRLS ask for donor information for all lump-sum donations received from United Way, so that individual donors of \$250.00 or more may be sent the required LSC disclosures, pursuant to 45 CFR § 1610.5(a).

In its response to the DR, SMRLS did not offer a comment on this recommendation.

11. It is recommended that SMRLS obtain an executed citizenship attestation or alien eligibility form from each applicant prior to referral to a *pro bono* attorney, in order to minimize instances of missing documentation.

In its response to the DR, SMRLS indicated that it “generally gets an executed citizenship attestation prior to referral to the volunteer attorney except where exigent circumstances prevent it from doing so.”

12. It is recommended that SMRLS conduct periodic reviews of case management and case status reports on open and closed PAI cases to ensure that all PAI cases are timely closed, only timely closed cases are reported to LSC, and that all case information relating to the provision of legal assistance is included in each file.

In its response to the DR, SMRLS did not offer a comment on this recommendation.

## V. REQUIRED CORRECTIVE ACTIONS

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

1. Pursuant to the requirements of 45 CFR § 1611.7, ensure that all computerized and manual intake forms properly screen for an applicant's reasonable income prospects.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 1 is completed and to provide this Office evidence when the action is completed.

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

In its response to the DR, SMRLS requested that this corrective action be combined with Required Corrective Action No. 8, since both corrective actions concern timely executed citizenship attestations. While both corrective actions reference the requirement to obtain and maintain timely executed citizenship attestations, Required Corrective Action No. 2 addresses the need for intake staff to be made aware of proper citizenship screening requirements, while Required Corrective No. 8 addresses the need for proper citizenship documentation to be contained in all case files, where applicable. As such, the corrective actions will not be combined. SMRLS is directed to ensure that Required Corrective Action No. 2 is completed and to provide this Office evidence when the action is completed.

3. Pursuant to the requirements of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, ensure that all computerized and manual intake forms indicate that both LSC and non-LSC funds may be used to represent applicants falling under the categories outlined in 45 CFR § 1626.4(a)(1) and (2).

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 3 is completed and to provide this Office evidence when the action is completed.

4. Ensure proper application of the over-income eligibility factors listed in 45 CFR § 1611.5 and the procedures enumerated therein for applying authorized exceptions when an applicant is over-income.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 4 is completed and to provide this Office evidence when the action is completed.

5. Ensure that no waiver or authorization form in use restricts SMRLS's ability to comply with the required LSC access rights under Section 509(h) of the 1996 LSC Appropriation.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 5 is completed and to provide this Office evidence when the action is completed.

6. Pursuant to 45 CFR § 1626.8 (b), SMRLS should ensure that the phrase "I believe" is removed from its emergency representation form for eligible aliens, so that it reads as: I will be able to produce the document/s to verify my immigration status on or before \_\_\_\_\_.

In its response to the DR, SMRLS indicated that the language in the emergency representation form for eligible aliens was corrected during the visit and that this corrective action should be removed. However, while the clause, "Documents to be provided: \_\_\_\_\_" was added to the emergency representation form, the phrase "I believe" was not removed from the form. As such, pursuant to the requirements of 45 CFR § 1626.8(b), SMRLS should ensure that the phrase is removed and provide this Office evidence when the action is completed.

7. Ensure that SMRLS's asset policy is revised to reflect that only assets, as defined in 45 CFR § 1611.2(d), are considered when determining whether the asset ceiling has been reached.

In its response to the DR, SMRLS did not offer a comment on this corrective action. As such, SMRLS is directed to ensure that Required Corrective Action No. 7 is completed and to provide this Office evidence that SMRLS's exempt asset list includes only those assets that are listed in 45 CFR § 1611.3(d)(1).

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

In its response to the DR, SMRLS requested that this corrective action be combined with Required Corrective Action No. 2, since both corrective actions concern timely executed citizenship attestations. While both corrective actions reference the requirement to obtain and maintain timely executed citizenship attestations, Required Corrective Action No. 2 addresses the need for intake staff to be made aware of proper citizenship screening requirements, while Required Corrective Action No. 8 addresses the need for proper citizenship documentation to be contained in all case files, where applicable. As such, the corrective actions will not be combined. SMRLS is directed to ensure that Required Corrective Action No. 8 is completed and to provide this Office evidence when the action is completed.

9. Pursuant to the Accounting Guide for LSC Recipients Section 3-5.2(d) (2010 Ed.), SMRLS must ensure that the bank reconciliation performed for the client trust accounts

will have the signatures of the reviewer affixed, as well as the date of the review, to indicate that review and approval was properly made by management.

In its response to the DR, SMRLS indicated that it agreed with this Finding and corrective action. It stated that, “its procedures for the reconciliation of bank and investment accounts have been amended to clearly state that the reviewer will sign and date all bank account reconciliations.” Additionally, SMRLS indicated that the reconciliation instructions have been updated with the signature and date requirement and that SMRLS’s internal control testing procedures have been updated to require that all reviewed bank accounts be validated by the person reviewing and approving the bank reconciliations (including client trust accounts). The validation of the reviewer now indicates that the reviewer has signed and dated the reconciliation form. Lastly, SMRLS indicated that “sampling for compliance” is not allowed for bank account reconciliations.

## Lora Rath

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**From:** Lynn Thompson <lynn.thompson@smrls.org>  
**Sent:** Friday, January 27, 2012 12:59 PM  
**To:** Lora Rath  
**Cc:** Jessie Nicholson  
**Subject:** SMRLS response to LSC findings  
**Attachments:** LSC OCE response 01.26.2012.pdf

Ms. Rath, on behalf of Jessie Nicholson, I have attached a PDF of Southern Minnesota Regional Legal Services' (SMRLS) response to the findings from the OCE visit in September 2011.

Regards,  
Lynn Thompson  
Southern Minnesota Regional Legal Services, Inc.  
Administrative Unit  
55 East 5th St., Suite 1000  
St. Paul, MN 55101  
Phone: 651-894-6908  
Fax: 651-894-6978  
[lynn.thompson@smrls.org](mailto:lynn.thompson@smrls.org)  
[www.smrls.org](http://www.smrls.org)

## **LSC/OCE Sept 2011 Site Visit SMRLS Comments on the Draft Report**

### Finding 2, SMRLS Rural Intake and Hotline, first full paragraph page 8.

It should be clarified that these decisions are made on a more senior level. LSC could add, "In the Metro Region, applicants with legal emergencies who walk-in outside of intake screening hours are screened for financial and case-type eligibility and seen by an attorney as soon as possible if an attorney is available."

### Finding 2, SMRLS Rural Intake and Hotline, last paragraph page 8.

Seems to indicate that most (Extended Service) cases are accepted by volunteer attorneys and the remainder go to staff. Most cases are done by staff.

Indicates that cases are accepted through "group case acceptance". SMRLS makes very limited use of this process. Senior and supervising staff have been making the case acceptance decisions, saving considerable staff meeting time.

Gives the impression that (Extended Service) cases are reviewed both at closing and at the end of the year by the lead attorney. The end of the year review is limited in nature and only in preparation for the self-inspection where that might be warranted.

### Finding 2, Citizenship and Eligible Alien Status Screening, first full paragraph page 10.

States that walk-ins (presumably rural offices) are put on the phone to call the Hotline, which could result in getting legal assistance/advice prior to executing an attestation or verifying alien status. What happens is that the Hotline screener verifies alien status on the phone and the office staff get the Attestation signed contemporaneously while the person is at the office going through a telephone intake.

### Finding 2, Conflicts, third paragraph page 11.

Indicates that the conflict cases are sequestered in a separate database. Conflicts remained in the regular database but the "office" was changed to "Conflict" which limits access to coordinators.

Where fact development and/or analysis is needed to decide whether a conflict case is a priority, it is referred to a volunteer attorney to develop the information to determine whether the case is a priority and whether there is sufficient merit. Then the coordinator attempts placement of the case with a volunteer attorney. This should be clarified that the coordinators do not have a lot of information about conflict cases.

SMRLS requests that LSC use "wall" instead of "Chinese Wall".

### Finding 2, Outreach, first paragraph page 12.

SMRLS would like for LSC to clarify that conflicts checks are often done after returning to the office when doing senior fairs, homeless conferences, etc, which is now authorized by the Minnesota Rules of Professional Conduct for clinic type services where conflict checking is not practical. The impression left is that SMRLS is always able to check conflicts remotely or that advice is not provided until after checking PIKA.

Finding 17, PAI, second full paragraph, page 30.

The bimonthly clinics are Self Help Divorce Clinics. There are other annual clinics (Senior Legal Fair, Rochester Law Day Clinic, etc) where assistance is provided in other substantive areas. LSC's report makes it sound like the bimonthly clinics cover a broad range of areas, and that is not the case.

Finding 17, PAI, third full paragraph, page 30.

This paragraph mixes up the VAP staffing and the responsibilities of those staff. LSC might not have quite understood that there are two VAP components - metro and rural, with some overlap and significant coordination. The description following the first sentence of the paragraph might be rewritten as follows:

“There are 2 part time (85% each) coordinators handling matters in the 28 counties of the SMRLS Southwest and Southeast regions, one in Mankato and one in Winona. The Mankato coordinator places cases in the 21 counties west of Rochester. The Winona coordinator places cases in the 7 eastern counties and coordinates the Self Help Divorce Clinics provided throughout the 28 county area. A Senior Leadership Attorney in Mankato supervises both coordinators and the PAI cases originating in both regions. There are 3 part time coordinators for the 5 county metro region located in the St Paul Central Office and handle cases for the St Paul, RIMS, and Eastside offices. These coordinators are supervised by a Senior Leadership Attorney located in the St Paul Central Office, who oversees all of the PAI cases originating from those offices and he supervises those coordinators.”

The last 4 sentences of that paragraph can remain unchanged.

Finding 17, PAI, Law Firms Referral Process, page 32-34.

1<sup>st</sup> paragraph - The Mankato and Winona coordinator status checks are quarterly, as opposed to biweekly and monthly.

2<sup>nd</sup> paragraph - The “case” file is not returned to the “Managing Attorney”. Rather, it goes to filing and the Senior Leadership Attorney reviews the electronic file at closing.

3<sup>rd</sup> paragraph continuing onto page 33: The Senior Leadership Attorney reviews the closed electronic file for divorce clinics, not prior to closing. Last sentence - the 99% completion rate for the clinics seems high and the rate is more likely closer to 95% based on a review of closed clinic cases.

1<sup>st</sup> full paragraph page 34 - SMRLS generally gets an executed citizenship attestation prior to referral to the volunteer attorney except where exigent circumstances prevent it from doing so.

Additional Input on the Draft

Regarding the attestation change in language for *emergency* representation (p. 13; p. 19, and corrective action 6 on p. 46), Please modify the language on p. 13 to indicate that this change was made to the attestation during the LSC visit (similar to the language included on p. 19). SMRLS requests that LSC remove the corrective action (#6) since it was completed during their visit. Where SMRLS made other corrections during the LSC

visit, LSC did not include them on the corrective action list so this should be treated similarly.

SMRLS requests that LSC combine corrective actions 2 and 8 since they both require timely excuted attestations. Corrective action 8 covers the information in corrective action 2. In addition, corrective action 2 references *Finding 6* (this is about retainers) so LSC probably meant to say *Finding 5* supra (the Finding dealing with attestations).

Suggested correction: On p. 23, LSC references Case No. MA-08-15553 as a RIMS case but it is an ELAP case.

Throughout the report, LSC should change all references of “managing attorney”, to “Senior Leadership or Supervising Attorney”. References to “Executive Director” should be changed to “Chief Executive Officer”.

#### Accounting Finding

Finding #32 (summarized): SMRLS’ policies and procedures compare favorably to LSC guidance, but two client trust account reconciliations lacked signatures and dates establishing review and approval by management.

#### Suggested response:

SMRLS agrees with the findings and the corrective action. The procedures for the reconciliation of bank and investment accounts have been amended to clearly state the reviewer will sign and date all bank account reconciliations.

The reconciliation instructions have been updated with this requirement and SMRLS’ internal control testing procedures have been updated to require all bank accounts reviewed to validate the person reviewing and approving bank reconciliations (including client trust accounts) has signed and dated the reconciliation form. Sampling for compliance is not allowed for bank account reconciliations.