



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

**South Carolina Legal Services, Inc.**  
April 18-22, 2011  
Case Service Report/Case Management Systems Review

Recipient No. 641030

## **I. EXECUTIVE SUMMARY**

**Finding 1:** SCLS' automated case management system (ACMS) is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. With a limited number of exceptions, the information contained in the case lists provided by SCLS prior to the visit was consistent with the information disclosed during the visit.

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

**Finding 3:** Sampled case files evidenced substantial compliance with income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (FPG). A limited number of case files evidenced that services were provided to an over-income client without the appropriate exception approval.

**Finding 4:** Sampled cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

**Finding 5:** With four (4) exceptions, the 770 sampled cases reviewed evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Furthermore, SCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated or untimely citizenship attestations and/or no documentation as to when staff verified alien eligibility.

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

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

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

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

**Finding 10:** Sampled cases evidenced that SCLS' application of the CSR case closure categories is in substantial compliance with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.); however, a few of the sampled cases reviewed had incorrect closing codes.

**Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were a few case files reviewed that were either dormant or closed in an untimely manner.**

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

**Finding 13: Review of SCLS' policies and the list of attorneys, who have engaged in the outside practice of law, revealed that SCLS 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 SCLS' 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: SCLS is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow up of the Private Attorney Involvement (PAI) cases. Additionally, the review of SCLS' PAI fiscal activities demonstrated that while SCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement), non-LSC funds used for PAI were not disclosed in the LSC PAI Schedule or footnotes in the 2010 Audited Financial Statements.**

**Finding 18: The review of documentation related to SCLS' payment policies and procedures determined that the program complies with the requirements of 45 CFR Part 1627 (Subgrants and membership fees or dues).**

**Finding 19: The sample documentation reviewed indicates that SCLS is in compliance with the requirements of 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 and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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

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

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

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

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

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

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

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

**Finding 30: SCLS is in substantial compliance with the requirements of 45 CFR § 1620.6, which requires those 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: A limited review of SCLS' Accounting Manual and procedures, and internal control policies and procedures, demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2). However, SCLS should ensure that every person involved with the approval and review of the bank reconciliation initial and date it and that all supporting documents be stamped as paid to avoid duplicate payments in accordance with the Accounting Guide for LSC Recipients (2010 Edition).**

## II. BACKGROUND OF REVIEW

During the week of April 18-22, 2011, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review at South Carolina Legal Services, Inc. (SCLS). 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 seven (7) 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 SCLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed SCLS 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 SCLS' upper and middle management, staff attorneys, and support staff. SCLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through March 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 770 cases to review on site, which included some targeted files. All but one (1) of the selected cases were reviewed. The one (1) file which was not reviewed was a file that could not be located during the on-site review.<sup>3</sup>

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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.

<sup>3</sup> See Case No. 200504000424.

SCLS is a non-profit corporation which provides free legal services in a wide variety of civil (non-criminal) legal matters to eligible low income residents of South Carolina. SCLS serves residents of all areas of the state with branch offices located in Greenville, Rock Hill, Greenwood, Spartanburg, Charleston, Pee Dee, Orangeburg, Conway, and two (2) in Columbia which includes the centralized intake unit, Legal Aid Telephone Intake System (LATIS). The administrative office of the program is in Greenville.

SCLS received grant awards from LSC in the amount of \$4,910,165 for 2009, \$5,403,707 for 2010, \$5,834,592 for 2011, and \$5,826,196. In its 2010 submission to LSC, the program reported 5,895 closed cases. SCLS' 2010 self-inspection certification revealed a 2.35% error rate in CSR reporting.

By letter dated February 15, 2011, OCE requested that SCLS provide a list of all cases reported to LSC in its 2008 CSR data submission (closed 2008 cases), a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and December 31, 2010 (closed 2010 cases), a list of all cases closed between January 1, 2011 and March 15, 2011 (closed 2011 cases), and a list of all cases which remained open as of March 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 SCLS staff and the other for cases handled through SCLS' PAI component. SCLS 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). SCLS 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 2008, 2009, 2010, and 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 SCLS agreement of March 22, 2011, SCLS 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>4</sup>

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<sup>4</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.

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

At the conclusion of the visit, OCE conducted an exit conference during which SCLS was made aware of the areas in which a pattern of non-compliance was found. No significant distinctions between 2008, 2009, 2010, and 2011 cases were found. OCE cited instances of non-compliance in the area of the documentation requirements of 45 CFR Part 1626. SCLS was found to be in substantial compliance in the areas of intake, documentation requirements of 45 CFR Part 1611 (Financial eligibility), documentation requirements of CSR Handbook (2008 Ed.), § 5.3, timely case closure, documentation of legal advice, application of closing codes, automated case management system, documentation requirements of 45 CFR § 1620.6, and duplicate case reporting.

Even before the visit concluded, SCLS' Executive Director had already started working to fix many of the review team's findings and provided the review team with a "Plan of Action for Improving SCLS Compliance" (PA). The PA covered actions being taken by the program regarding execution of retainer agreements, application of closing codes, manual intake form revision, execution of citizenship attestations, waiver factors, supervision of PAI cases, and execution of signed statement of facts.<sup>5</sup>

SCLS was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit written comments in response. Thereafter, a Final Report would be issued that would include SCLS' comments.

By letter dated June 23, 2011, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. SCLS was asked to review the DR and provide written comments. By letter dated July 22, 2011, SCLS submitted its comments to the DR. SCLS has taken several corrective measures in response to the DR (some issues had been addressed prior to the conclusion of the on-site review), which were detailed in their comments to the DR. SCLS also provided some additional details on a few of the specific findings in the DR. Additional information was submitted on September 12, 2011, September 20, 2011, and October 6, 2011. OCE has carefully considered SCLS' comments and has either accepted and incorporated them within the body of this report or responded accordingly. SCLS' comments, in their entirety, are attached to this Final Report.

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<sup>5</sup> During the review period one (1) case did not have a signed statement of facts at the time the case was reviewed. However, prior to the conclusion of the visit, a copy of the pleadings in that case was pulled from court records which were signed by the client, thus satisfying 45 CFR Part 1636.

### III. FINDINGS

**Finding 1: SCLS' automated case management system (ACMS) is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. With a limited number of exceptions, the information contained in the case lists provided by SCLS prior to the visit was consistent with the information disclosed during the visit.**

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, the ACMS system of SCLS is sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. On August 31, 2009, SCLS launched Legal Server by PSTI Technologies (Legal Server) as their case management system. Interview of the staff member responsible for creating and updating SCLS' ACMS system indicated that Legal Server has sufficient fields to capture the information needed to conduct an effective eligibility screening for applicants whose income was under 125% of the FPG and to manage a case through closing.

At the time of the CSR review, however, Legal Server did not contain a field for clearly documenting an applicant's expenses or other criteria that could justify an over-income waiver. SCLS' is working to include this, or find some other way to document this information. Aside from this exception, SCLS appears to use Legal Server in a manner sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

With a limited number of exceptions, the information contained in the case lists provided by SCLS prior to the visit was consistent with the information disclosed during the visit. *See e.g.* Case No. 10-0573548, where the closing code in the file was different from the closing code stated on the case list; and Case No. 200842000477, where the funding code on the file was different from the funding code stated in the case list.

SCLS should verify that the correct case file information is entered and recorded in the ACMS. It is recommended that SCLS update their ACMS so that it contains a field for clearly documenting an applicant's expenses or other criteria that could justify an over-income exception in accordance with SCLS' eligibility policy.

In response to the DR, SCLS stated that Legal Server has been changed to require the intake staff to get the necessary information in order to make an exception if the applicant's income is between 125 and 200 % of the federal poverty income guidelines. SCLS further stated that they are requiring that the information provided specifically address the exception factors outlined in their income policy. The ACMS will not allow intake staff to move to the next step until this

information has been entered. SCLS attached a screen shot of this modification with their response.

SCLS further stated as follows:

“All closed cases are reviewed by the relating managing attorney. There are times when the advocate may have used an improper closing code and the error is found during the closed case review. There also may be times when the needed update did not get entered into case management. The current SCLS policy is that all closures be verified in case management to make sure the closing information was properly entered into case management. We will reinforce this policy with staff.”

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

OCE staff assessed the intake procedures of all offices by interviewing the primary intake staff persons responsible for conducting intake screenings and observing intake activities on site. The interviews revealed that the predominant intake method is through the LATIS intake office, though offices will conduct walk-in or in-person intake and set up appointments at the branch offices when necessary. The recipient has emergency intake provisions to accommodate applicants with time-sensitive cases. In addition, several of the offices conduct intake at outreach locations. SCLS uses the same intake model, with only minor variations, in each of the branch office visited. Intake procedures performed by the intake staff support the program's compliance-related requirements with respect to obtaining written citizenship attestations for walk-in clients, and performing conflict and duplicate checks during the intake process. However, in a few offices the intake procedures performed with regards to screening an applicant for income eligibility and considering all authorized exceptions and factors do not support the program's compliance related requirements. One (1) intake screener, and the manual intake form used at outreach and clinics, fails to screen applicants for reasonable income prospects. Additionally even though an attestation is obtained from every walk-in applicant, there are no protocols in place for linking said attestations to the applicants who call LATIS and are provided with brief service. A description of the model and intake concerns is provided below followed by a description of specific findings.

*Walk-in or In-Person Intake Procedures*

As noted above, SCLS uses Legal Server as its ACMS. The majority of SCLS' applicants are screened through LATIS. Walk-in or in-person intake is also conducted by the Columbia, Conway, Charleston, Greenville, Greenwood, Pee Dee (Florence), Rock Hill, Orangeburg, and Spartanburg intake staff when required. Staff in the Charleston office's Migrant Unit also conducts intake off-site and staff in the other branch offices conduct intake during clinics held off-site.

The general walk-in or in-person intake procedure is as follows: initially the intake staff establishes that the applicant's legal services requirement is within SCLS' priorities. Once this

determination is made, the applicant's eligibility information is input directly into the ACMS; no manual intake forms are used. During this process the applicant's income/asset eligibility, citizenship status, and legal issue(s) are verified. The citizenship attestation, along with the Authorization to Release Information and a case-specific questionnaire, is also obtained at this time. If the applicant appears to be ineligible based on the reported income or assets, the intake staff person may partially complete an Exception to General Income Guidelines form and present it to the Managing Attorney of the branch office for consideration. The Exception to General Income Guidelines form may or may not indicate that one (1) of the permissible exceptions to the income/asset overage may be applicable due to the applicant's circumstances. Many of the branch intake staff were unaware of the authorized exceptions to the income/asset guidelines, or that in some circumstances waivers are statutorily permitted for applicants whose income exceeds 200% of the Federal Poverty Guidelines (FPG).

If an applicant appears eligible for services but the case is not a type that is typically handled by the specific branch office, the applicant is provided with the phone number to LATIS, and is instructed to call LATIS to have their case placed with an SCLS attorney. If the applicant wishes to contact LATIS from the branch office, they are provided with a confidential room and telephone to contact LATIS to discuss the details of their case. If the applicant prefers to contact LATIS at another location, they are provided with LATIS hours of operation. Citizenship and financial eligibility screening is conducted prior to the applicants being provided the information by which to contact LATIS.

If the applicant appears eligible for services, and the case is an emergency, the intake staff person schedules a meeting with the applicant and an available attorney, completes the Case Opening Checklist and/or Case Record Sheet, and creates a physical case file with the corresponding ACMS case number. The client then meets with the attorney, who provides legal assistance to the client.

If the applicant appears eligible for services and their case is not an emergency, then the applicant is informed that their case will need to be accepted for representation and they will be notified whether the program declines or agrees to accept the applicant's case. The attorneys at each branch office meet with their Managing Attorney weekly to determine which cases will be accepted and rejected. At the conclusion of the meeting, applicants are informed as to whether their case will be accepted or rejected.

Once the staff attorney has ceased work on a client's case, the case is closed using a File Closing Checklist, which allows the staff attorney to identify the highest level of service provided to the client, as well as confirm the client's eligibility. Additionally, the client is sent a Closing Letter, which indicates that the matter has been fully resolved. Once the attorney has closed the case, the Managing Attorney reviews the closed file and verifies that the case closure code is accurate and that the case is or is not CSR-reportable.

### *Telephone Intake Procedures*

LATIS is open to accept intake calls from 9:00 am to 6:00 pm. The office remains open all day by allowing staff to take staggered breaks. LATIS is staffed by six (6) staff members, one (1) of

whom is located in the Orangeburg office. Five (5) of the staff are paralegals; one (1) is a very experienced intake staff member. One (1) staff member speaks Spanish and conducts Spanish-language intakes.

The intake procedure for telephone applicants is virtually identical to the walk-in intake procedure with respect to the eligibility screening. LATIS' call system allows callers to choose whether they would like to apply in Spanish or English. If they choose Spanish, they are transferred to the Spanish-speaking intake paralegal. Staff is usually able to pick up calls as they come into LATIS and do not typically need to do call-backs.

Once intake staff picks up a call they conduct a pre-screening before deciding whether to open a case number and conduct a full intake. During the pre-screen, they ask where the applicant is located, what their legal issue is, their gross income, the size of their households, and conduct a conflict check. If the applicant appears to be eligible, the LATIS staff will conduct a full intake.

In completing a full intake, LATIS staff first completes the "Initial Information" screen which contains the intake date, intake office, the type of intake (*e.g.*, phone, in-person), the applicant's name and contact information, etc. Staff then does a conflict check against both the applicant and the adverse party's name. Staff also checks to see if the applicant is already a client. If the applicant is calling about an existing case, the intake staff refers the client to the staff attorney handling the case. If the applicant is calling about a different legal issue, staff opens a new file in Legal Server and notes that the applicant already has a case with SCLS and provides the case number. The attorney handling the case decides whether the two (2) cases should be treated as one (1) case.

If there is no conflict, the intake staff moves to the "Applicant Demographics" screen, where they ask about a number of things, including citizenship. The "Citizenship Status" field is a mandatory field and staff must select either "Citizen" or "Non-Citizen" in order to move to the next screen. If "Non-Citizen" is selected, the system prompts staff to select the applicant's legal status from a drop-down box and also allows staff to add additional information about the applicant's immigration status. Intake staff indicated that if an applicant cannot identify their legal status, they explain that SCLS cannot proceed with the application without that information. Staff is aware of the exceptions allowed under the Violence Against Women Act 2006 Amendments. LATIS staff does not ask whether an applicant has walked into another SCLS' office and has already signed a citizenship attestation. Currently, there is no method in place for linking the attestations obtained at the branch offices from walk-in applicants who are informed to call LATIS with the intakes conducted at LATIS.

Intake staff then moves to the "Financial Information" screen. Staff inquires about the size of the applicant's household and the income of all household members. There is a drop-down box for various different sources of income which prompts staff to inquire about type and frequency of the income source. Income is a mandatory field. The ACMS automatically calculates the applicant's "Income Totals," which include "Percentage of Poverty." If the applicant's income is under 125%, the income percentage is in a green font. If the applicant's income is over 125%, the income percentage is red. Staff then asks, "Do you have reason to believe that your income is likely to change significantly in the near future?" This is a mandatory field and if the answer

is “yes,” staff must also enter “Prospective Income Notes” to explain the nature of the prospective income.

The ACMS also includes an “Income Eligible” line that will inform staff “Yes” or “No” as to LSC income eligibility based on the income totals and percentages. If the answer is “No,” staff has the option to select “Override.” This function allows staff to send an automated request to SCLS’ Executive Director or her designee for an over-income waiver. Intake staff does not submit these requests. If the applicant is over 200% of the FPG, intake staff will inform the applicant that they are not eligible for services and the LATIS Managing Attorney will send them a letter explaining this. However, if their income is between 125% and 200% of the FPGs, LATIS intake staff leaves it to the individual branch office staff to decide whether to ask for a waiver and accept the case. Intake staff also does not consistently inquire about expenses or other facts that may indicate whether the applicant qualifies for an income exceptions as per 45 CFR Part 1611. There is also no separate field in Legal Server that would prompt staff to do so.

Intake staff then inquires about the applicant's assets. They ask how much the applicant has in their wallet, in bank accounts, the value of their homes, land, how many cars they own, etc. Interviews indicated that LATIS staff is experienced in conducting an effective asset screening and knowledgeable as to SCLS' old and new asset ceilings. Staff then enters the amount of assets into the designated mandatory "Asset Entry" fields in Legal Server. The applicant’s "Total Assets" are automatically calculated. Like with income, if an applicant has assets over SCLS' ceiling, the branch office assigned the application decides whether to request an over-asset waiver and accept the applicant. Intake staff will, however, note in the notes field of Legal Server that the applicant would need a waiver. Intake staff also currently inquires about, and documents, applicants' assets even where applicants' sole source of income is from a government program for the poor.

Intake staff then uses scripts that are already programmed into Legal Server to inquire about and document facts relating to the applicant's legal problem. Intake staff does not give legal advice to the applicant. Interviews indicated that staff is aware that the South Carolina ethical rules do not allow them to give advice, but only to provide applicants with information. Lastly, staff asks the applicant a series of mandatory questions, including confirming the applicant's understanding that there is no guarantee of acceptance, and obtaining consent to share information about the case with attorneys who may be able to assist them.

The simulated ACMS intake screenings for all offices revealed that conflict and program-wide duplicate checks were performed in the ACMS system during the intake screening, after the applicant provided their name and all relevant party information.

*Reasonable Income Prospects Screening:* During intake, the intake staff interviewed reported that proper inquiry is made into the reasonable income prospects of applicants, and there is a specific question for reasonable income prospects screening in the ACMS system. However, on the manual intake form, which is used during outreach initiatives, there is no place to record reasonable income prospects. As such, it is recommended that SCLS revise its manual intake form to include a screening for reasonable income prospects as required by 45 CFR §

1611.5(a)(4)(i), which mandates that SCLS inquire into every applicant's reasonable income prospects during intake.

*Citizenship and Eligible Alien Status Screening:* Intake staff demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Intake staff verifies citizenship status during the intake screening and, when necessary, requires documentation of eligible alien status before completing the intake. Once the applicant provides this information, the intake staff person determines if the applicant is an eligible alien pursuant to 45 CFR Part 1626.

Intake staff stated that written citizenship attestations are obtained prior to conclusion of the initial intake interview for those applicants who walk into the office; the applicant is instructed to sign the citizenship attestation form, which contains a proper citizenship attestation. This is in compliance with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, which requires recipients to obtain written citizenship attestations whenever program staff has in-person contact with the applicant. However, currently there is no system in place for notifying LATIS that an applicant has walked in to a branch office and as such the attestations do not get matched up to the applicant cases which get accepted by LATIS for brief service.

Most of the intake staff interviewed in the branch offices demonstrated an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, with respect to removal of the requirement to obtain a signed citizenship attestation or alien eligibility documentation from an otherwise ineligible alien, and exclusion of all assets, other than those of the victim, from consideration during the financial eligibility screening.

*Income Screenings:* Interviews with intake staff revealed that intake staff is aware of the income ceilings set by SCLS. The intake staff expressed an understanding that an applicant will be considered eligible if their income is under 125% of the FPG. If the applicant's income is between 125% and 200% of the FPG, then the intake staff may inquire as to the existence of exceptions (e.g., medical expenses, child care expenses, etc.), or the intake staff may document the circumstances of the applicant's case, and send a request to the Managing Attorney to have the income guidelines waived. Intake interviews revealed a break-down in communication with respect to application of the authorized exceptions to the income eligibility guidelines. The intake staff was under the impression that the attorney assigned to the case, or the Managing Attorney, would obtain the necessary facts and documentation to apply the exceptions and/or grant a waiver. However, the attorney handling the case and/or the Managing Attorney are reviewing the request to waive the income guidelines as though it is complete and needs no additional information. As a result, the intake staff in most branch offices are unaware of the authorized exceptions to the income guidelines, as enumerated in 45 CFR § 1611.5 (a)(4), or the procedure of applying the exceptions to deem an over-income client eligible for services.

With respect to the Exception to General Income Guidelines form, at times the intake staff would input anecdotal information as a potential basis for financial eligibility (e.g., "client is old and housebound"), which would not relate to the above-referenced authorized factors to the income requirement. The recordation of such information, and the execution of the form by the

Managing Attorney, would often lead to an applicant being deemed financially eligible, based on factors that were not listed as authorized exceptions in 45 CFR § 1611.5.

*Asset Screenings:* Interviews revealed that intake staff is familiar with the SCLS' asset limit and has an understanding of the categories of assets that should be included and excluded from asset eligibility determination

*Group Eligibility:* Intake staff indicated they do not receive group applicants; if they did, they would seek guidance from the Managing Attorney before they conduct a group eligibility screening.

*Outreach:* The branch offices conduct outreach at various locations. All offices coordinate a monthly *pro se* clinic where forms and legal information are provided to the attendees. For attendees seeking legal advice, manual intake forms are completed and the information is later inputted into the ACMS system. Once the applicant has been fully screened and the conflict/duplicate check has been performed, legal assistance is provided to the *pro se* applicant. At the outreach initiatives, if a person requests to speak with a program attorney to receive legal advice, the person is not provided with legal advice; they are instructed to call an SCLS office or LATIS in order to be screened and have their legal concern addressed once they have been deemed eligible.

*Case Acceptance and Oversight:* LATIS' Managing Attorney decides whether a case will be accepted, rejected, or referred to one of SCLS' branch offices. If the case is rejected, the applicant is sent a rejection letter that includes information on SCLS' grievance procedure and about the South Carolina Lawyer Referral Service, which provides low cost legal services.

The LATIS Managing Attorney will accept and assign some counsel and advice cases to himself and send those clients advice letters. The Managing Attorney oversees his own cases but he will also ask an experienced staff member to take a second look at cases to check for compliance issues.

If the Managing Attorney refers the case to a branch office, he will transfer the case electronically via Legal Server. Interviews in branch offices indicated that the branch office checks how many cases LATIS has referred to them daily. The branch office to which a case is referred will then decide whether they will accept it (as staff or PAI), ensure they have a waiver if needed, and how they will fund the case. The branch offices can see from Legal Server's "LSC Eligibility" screen whether the applicant is eligible for acceptance and if not, why and how they can become eligible (*e.g.*, an over- income waiver is needed or intake information is incomplete). If the branch office accepts a case, that office will also oversee the case until closing.

When a case is ready to be closed, the attorney handling the case will check the file and use the appropriate case closure check list sticker to check for compliance and other issues. The closing sticker is placed on the front of the paper case file. The Managing Attorney reviews all closed cases and a staff member checks to ensure that the information in the case file matches that in Legal Server.

Based on the above stated findings the following recommendations and corrective actions were made while on-site. SCLS: should revise its manual intake form to include screening for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i); ensure that all intake staff are trained on the applicability of 45 CFR § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance; ensure that all intake staff are trained on the applicability of 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income; and ensure that staff can easily match attestations signed by walk-in applicants to their case files once accepted for service by LATIS. SCLS had started incorporating several of the recommendations and corrective actions prior to the conclusion of the CSR/CMS review.

In response to the DR, SCLS stated that they have revised their manual intake form to include screening for reasonable income prospects. SCLS stated that this form will eventually closely mirror the Legal Server intake form. SCLS also stated that some outreach and satellite locations are equipped with wireless internet; so intake can be conducted directly into Legal server.

SCLS stated that they have updated their walk-in intake procedure so that the citizenship attestations are linked to applicants who are directed to call LATIS. A screen shot showing modification of the Legal Server intake fields to account for walk-in applicants who call the central intake office after referral from a field office was attached to the response.

SCLS further stated that their Language Access Coordinator prepared a PowerPoint Presentation in 2011 addressing eligibility requirements for citizens and non-citizens. SCLS stated that all current staff has seen the presentation, and that new staff will see it as hired.

As stated above in response to Finding No. 1, SCLS has also changed their ACMS to require the intake staff to inquire about, and document, the necessary information in order to make an exception if the applicant's income is between 125 and 200% of the FPG.

**Finding 3: Sampled case files evidenced substantial compliance with income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (FPG). A limited number of case files evidenced that services were provided to an over-income client without the appropriate exception approval.**

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>6</sup> *See* 45 CFR § 1611.3(c)(1),

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<sup>6</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

SCLS' revised financial eligibility policy, adopted by its Board of Directors on March 11, 2011, sets SCLS' annual income ceiling at 125% of the FPG to assure that those least able to obtain legal assistance may receive quality legal services. Under certain circumstances, and with approval, income eligibility guidelines can go up to 200% of the FPG. The exceptions enumerated in SCLS' policy are compliant with the requirements of 45 CFR Part § 1611.4.

SCLS is in substantial compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. A limited number of case files evidenced that services were provided to an over-income client without the appropriate exception approval. *See e.g.* Case Nos. 10-0568054, 200823000855, 200742000706, 10-0570275, and 200940000411.

In response to the DR, SCLS stated that two (2) of the above referenced cases did contain information in the file that would have provided the proper basis for an exception. LSC was aware of this fact during the review and had brought it to management's attention for this very reason. During the on-site review it was recommended that SCLS review the files which were over-income or over-assets to see if the waiver or exception form could be completed properly so that the cases could be made compliant with the requirements of 45 CFR § 1611.4.

SCLS should ensure that an over-income exception approval is obtained for all applicants whose income is over 125% of FPG before they are accepted as clients.

In response to the DR, SCLS stated that Legal Server has been changed to require the intake staff to get the necessary information to grant an exception if the applicant's income is between 125 and 200% of the FPG. SCLS further stated that the information to grant the waiver must specifically address the factors outlined in their policy and the LSC regulations. Legal Server

will not allow the intake staff to move to the next step in the intake process until this has been done. SCLS further stated that Managing Attorneys are directed not to assign a case to an advocate until an exception has been granted or there is another funding source assigned to the case. SCLS attached a screen shot from their ACMS showing the modification made in the intake fields so that intake staff must follow the income and asset exceptions policy.

**Finding 4: Sampled cases evidenced substantial compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.**

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>7</sup> *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

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

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

The Financial Eligibility guidelines approved by the SCLS Board of Directors on March 11, 2011, establish the program's asset ceiling at \$15,000 plus \$1,000 for each additional household member. Exempt from consideration is the applicant's or household's principal residence, vehicles used by the applicant or household for transportation, and assets used in producing income which are all exemptions allowed under 45 CFR § 1611.5. SCLS also exempts personal and household effects to the limit of \$4,275 and the cash value of IRA, Keogh Plans, or other retirement plans which are exempt allowed under State or Federal law.

Sampled case files reviewed revealed that SCLS is in substantial compliance with 45 CFR § 1611.6, revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, CSR Handbook (2008 Ed.) § 5.4. With one (1) exception, the files that were reviewed during the visit contained the asset determination required by LSC. The one (1) exception was Case No. 200942000179.

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<sup>7</sup> A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

There are no recommendations or corrective actions required.

**Finding 5: With four (4) exceptions, the 770 sampled cases reviewed evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Furthermore, SCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated or untimely citizenship attestations and/or no documentation as to when staff verified alien eligibility.**

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

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.<sup>8</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 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.

With four (4) exceptions, the 770 sampled cases reviewed evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). *See* Case Nos. 200840000712, 10-0570859, 10-0564033, and 200742001126. A citizenship attestation was required and lacking in each of these four (4) cases. Absent the requisite Part 1626 documentation, these files should be excluded from SCLS' CSR data submission to LSC and the files must not be charged to LSC funds.

In response to the DR, SCLS stated that Case No. 10-0570859 does not require a citizenship attestation because there was never an in-person contact and, as such, an attestation is not required. The information gathered during the on-site review revealed that this case was closed

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<sup>8</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

with an “L” closing code, which is an extended service, therefore an attestation is required, regardless of whether the client was seen in person or not.

Furthermore, SCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. However, a limited number of case files included undated citizenship attestations and/or no documentation as to when staff verified alien eligibility. The exceptions were present in all offices and in files from every year in the review period. *See e.g.* Case Nos. 200823000514, 09-0562153, 200823000992, 200823001146, and 200823000249.

SCLS must ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626.

In response to the DR, SCLS stated that they are reminding all their staff that anytime someone who is a potential applicant comes into the office for service, the citizenship forms must be signed. SCLS further stated that they will also remind their advocates as follows:

“to always check the file to be certain that the signed citizenship documents are in the file before doing anything on the file including giving C&A, Legal Server will be changed to determine if the call-in applicant got the telephone number from visiting a local office. If so, the attorney must obtain the signed citizenship documents before doing anything on the file including giving C&A. This provision will apply to offices including the centralized telephone intake office. The written citizenship policy will be modified to include the above provisions.”

**Finding 6: Sampled cases evidenced substantial compliance with the 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>9</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

SCLS is in substantial compliance with the requirements of 45 CFR § 1611.9. Two (2) cases did not contain a retainer agreement, when required. *See e.g.* Case No. 200823001028, this is a closed 2008 staff case file that was closed under closing code “F”, negotiated settlement without litigation, and did not contain a retainer agreement in the file.

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<sup>9</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.

Pursuant to 45 CFR § 1611.9 (a), the retainer agreement shall identify the nature of the legal services to be provided. Three (3) case files lacked an adequate description of the scope of representation. *See e.g.* Case No. 200723000010, this was a closed 2008 staff case file that was closed under closing code “H,” administrative agency decision. The scope of representation, as noted in the retainer agreement contained in this sampled case file, was “SSI”. As such, a more specific identification of the legal services to be provided to the client is necessary in order to comply with 45 CFR § 1611.9 (a). Case No. 200823000444, was a closed 2008 staff case file that was closed under closing code “I(a),” uncontested court decision. The scope of representation, as noted in the retainer agreement contained in this sampled case file, was “separate maintenance.”

In response to the DR, SCLS stated that “separate maintenance” is an alternative to divorce in South Carolina and as such should be a sufficient scope for the retainer agreement in Case No. 200823000444. 45 CFR § 1611.9 (a) requires that the retainer agreement 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.” LSC considered SCLS’ argument and has determined that “separate maintenance” does not meet this requirement; SCLS must include additional information on its retainers.

Two (2) other retainers reviewed evidenced issues with the execution of the retainer. *See e.g.* Case No. 200910001056, the retainer agreement was executed 13 months after starting representation.

SCLS must ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements) by reviewing all case files required to have a retainer agreement and verifying that all agreements contain a detailed scope and subject matter of the representation, and are executed in a timely manner.

In response to the DR, SCLS stated that Managing Attorneys have been directed to immediately discuss the circumstances under which retainers must be signed, and to remind and train the attorneys under their supervision accordingly.

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

There are no recommendations or corrective actions required.

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

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

Prior to the visit, OCE was provided a list of SCLS' priorities. SCLS' most recent Statement of Priorities lists program priorities as: Consumer/Finance; Education; Employment; Family; Health; Housing; Income/Maintenance; Miscellaneous and Elder Law; Emergencies.

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

There are no recommendations or corrective actions required.

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

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

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2001 Ed.), ¶ 7.2 and CSR Handbook (2008 Ed.), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such

information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

SCLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6; however, a few cases did not include documentation of the legal assistance provided to the client. *See e.g.* Case No. 10-0568648, this case was a PAI case file that did not contain a description of the legal assistance provided to the client. It was closed under closing code “L,” extensive service. The case file did not contain a description of any legal assistance provided to the client. This case should have been de-selected and not included in the CSR data submission reporting. Case No. 200823000892 was a PAI case file that did not contain a description of the legal assistance provided to the client; Case No. 10-0566338 was also a custody case, and there was no evidence of legal work noted in the file as of the date of review.

SCLS should ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs.

In response to the DR, SCLS stated as follows:

“SCLS will continue to document its legal assistance in each file selected for inclusion in the CSR. SCLS has already trained staff to adhere to this requirement in its on-going compliance training. Managing attorneys will continue to particularly check for this requirement as they conduct case reviews.”

**Finding 10: Sampled cases evidenced that SCLS’ application of the CSR case closure categories is in substantial compliance with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.); however, a few of the sampled cases reviewed had incorrect closing codes.**

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

The files reviewed demonstrated that SCLS’ application of the CSR case closing categories is substantially consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). The case sample evidenced a few instances of incorrect application of closing codes, but no pattern was found. *See e.g.* Case No. 10-0566447, this case was closed under closing code “F,” negotiated settlement without litigation. The case notes indicate that a settlement agreement was reached during the litigation process, which resulted in a consent order being executed and filed in the court case. Closing code “G,” negotiated settlement with litigation, is the applicable closing code; Case No. 200623001899, this case was closed under closing code “I(a),” uncontested court decision. The case notes indicate that the contract attorney represented the client with respect to a custody matter, and that the client’s request for custody was contested. Specifically, the final order indicates that both parties were represented by counsel at the custody hearing and that there was some opposition to the request for custody.

Closing code “I(b),” contested court decision, is the applicable closing code; and Case No. 10-0566054, this case was closed under closing code “I(a),” uncontested court decision. The case notes indicate that the contract attorney represented the client with respect to a divorce matter, and that the client’s request for an absolute divorce was contested. Specifically, the final order, as well as the contract attorney’s invoices for this case, indicates that both parties were represented by counsel at the divorce hearing and that there was some opposition to the proposed terms of the divorce. Closing code “I(b),” contested court decision, is the applicable closing code.

The DR recommended that SCLS conduct periodic training on closure codes to ensure that staff is aware of the applicability of each closing code.

In response to the DR, SCLS stated that as follows:

“SCLS will continue to discuss closing codes during compliance training with staff. All SCLS offices will be visited for compliance trainings before the end of October 2011. Management review of closed cases is intended in part to limit errors in application of closure codes.”

**Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 as there were a few case files reviewed that were either dormant or closed in an untimely manner.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, limited action, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).<sup>10</sup> There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

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<sup>10</sup> The time limitation of the 2001 Handbook that a limited action case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR closure Category L (Extensive Service).

Case review demonstrated that SCLS is in substantial compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a). There were a few cases files reviewed that were either dormant or closed in an untimely manner. *See e.g.* Case No. 10-0568474, which was opened in May 2010 and closed in February 2011 as “limited action,” but the file lacked a CSR Handbook (2008 Ed.), § 3.3(a)(ii) entry; Case No. 20014229798 was opened in 2001 and closed in 2010 as “extensive service,” but no activity was documented in file between 2004 and 2007. Case No. 200442000315 was opened in 2004 and closed in 2010 as “other,” but the last documented activity was 2004. Case No. 200540001574 was closed with a “K” closing code on April 15, 2010. The case file indicated that the client wanted to be relieved of a child support order, but the opposite party could not be located and the petition was administratively dismissed on June 4, 2007, which was the last date of service. Case No. 200410000178 was closed with an “I(b)” closing code on December 30, 2010. A court filing for dissolution of marriage was closed on May 25, 2006.<sup>11</sup>

SCLS should ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remained open for an extended period of time. It is further recommended that SCLS review its list of open cases and mark for rejection and exclude from the CSR data submission all dormant and inactive case files.

In response to the DR, SCLS stated as follows:

“The SCLS policy is that advocates contact clients at least monthly to inform them of the status of case. In addition, the SCLS policy states, “The decision to end the provision of assistance to a client is to be made by the advocate who handled the case. Once the decision to stop assistance is made, the file should be closed within 20 days of that decision. This means that all closing procedures should be completed and the file given to the appropriate person for review within two weeks of closure.” Our managing attorney conducted quarterly open case review to check for both substantive work and compliance. In the process of reviewing cases, they provide suggestions and deadlines to make certain that cases do not become dormant. In Addition, our Grant and Compliance Administrator systematically checks open files that have not had recent timekeeping to assure that cases do not become dormant. Also, compliance trainings with staff include procedures for timely case closure.”

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

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

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<sup>11</sup> It should be noted that some of these cases had already been de-selected by SCLS as untimely.

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

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

SCLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplicate files. The case sample disclosed one set of duplicate files. Case No. 23000189 is a duplicate of Case No. 200923000086. Only one (1) case should be reported to LSC.

There are no recommendations or corrective actions required.

**Finding 13: Review of SCLS’ policies and the list of attorneys, who have engaged in the outside practice of law, revealed that SCLS 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 and Director of Litigation, review of the recipient’s policies and the list of attorneys who have engaged in the outside practice of law, SCLS is in compliance with the requirements of 45 CFR Part 1604.

There are no recommendations or corrective actions required.

**Finding 14: Sampled cases and review of SCLS' accounting and financial records for the review period 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.

OCE's review of SCLS' accounting records and documentation for the period of January 2010, through March 2011, along with discussion with program management did not reveal or indicate that the program expended grant funds or contributed personnel or equipment and resources in violation of 45 CFR §§1608.3(b) and 1608.4(b).

Sampled files reviewed, interviews with the Executive Director and Director of Litigation, and the review of SCLS' accounting and financial records for the review period stated above indicate that SCLS is not involved in such activity. Discussions with the Executive Director also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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

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

Sampled cases and interview with the Executive Director evidenced compliance with the requirements of 45 CFR Part 1609.

There are no recommendations or corrective actions required.

**Finding 16: A limited review of SCLS' 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).**

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).

OCE's review of SCLS' general ledger (GL), its chart of GL accounts, GL account coding of transactions, the GL trial balances as of December 31, 2010 and January 31, 2011, and its Accounting Manual found that SCLS' accounting system, along with its operating policies and procedures, have the capabilities to separately and distinctly account for LSC and non-LSC funds. The design of SCLS' accounting records also properly identifies the source of non-LSC funds and documents how SCLS spends/transfers its non-LSC and LSC funds, respectively, as required by 45 CFR Part 1610 and the Accounting Guide for LSC Recipients. Further, the review noted no exceptions to or inconsistencies with LSC accounting and financial reporting requirements in this area.

OCE's review of the program's donor notification policies and procedures determined that SCLS properly notifies its non-LSC funding sources and individual donors, who contribute more than \$250, of the LSC prohibitions and conditions that apply to their funds and contributions as required by 45 CFR § 1610.5 – *Notification*. To ensure compliance, the Executive Director indicated that non-LSC funding sources are made aware of this requirement during the grant solicitation process and donors are notified in SCLS' donor acknowledgement and thank you letter. Several non-LSC grant documentation files and sample donor acknowledgement letters were examined. No exceptions were noted.

While on-site, SCLS provided OCE with its 2009 and 2010 program integrity certifications and the Executive Director's memorandums to the Board of Directors. The review found no exceptions with this documentation and determined the program to be in overall compliance with 45 CFR § 1610.8.

There are no recommendations or corrective actions required.

**Finding 17: SCLS is in substantial compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow up of the Private Attorney Involvement (PAI) cases. Additionally, the review of SCLS' PAI fiscal activities demonstrated that while SCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement), non-LSC funds used for PAI were not disclosed in the LSC PAI Schedule or footnotes in the 2010 Audited Financial Statements.**

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.

SCLS utilizes a judicare program to fulfill its PAI effort. As such, all of the attorneys who provide PAI services under this model are compensated pursuant to a contract for legal services that is executed by the contract attorney and SCLS. During the on-site review, the PAI coordinators, and Managing Attorneys, for all branch offices were interviewed.

Cases appropriate for referral to contract attorneys are identified during routine case acceptance meetings. Once a decision has been made to refer the cases to PAI they are provided to the PAI coordinator who changes the coding in the ACMS from a staff case to a PAI case. The PAI coordinator then makes a copy of the file documents, and mails the referral letter to the applicant and attorney. The cases referred are primarily bankruptcy, family, and probate cases.

Following the referral, cases are tracked by the individual PAI coordinator. The PAI coordinator in most offices sends a quarterly case status report to each contract attorney, who is requested to complete and return the report in a timely manner. In addition to the status reports, if the contract attorney is not submitting timely invoices for the hours worked, the PAI coordinators often attempt to communicate with the contract attorneys via telephone and electronic mail.

Attorneys are requested to return the status report indicating whether they have met with the client and the next steps to be taken in the case. However, many attorneys do not complete and return the report in a timely manner, which leads to several files being removed from CSR data

submission due to dormancy. For those cases where the contract attorney does not provide a response to the status report, the PAI coordinator notifies the Managing Attorney, who then begins communicating with the contract attorney regarding case status. At case conclusion, the contract attorney sends a closing letter to the client, indicating that the case is closed and identifying the highest level of service provided. Once the case closure letter is received by the PAI coordinator, the applicable closing code is assigned, and reviewed by the Managing Attorney. Cases are closed on the ACMS by the PAI coordinators in the respective offices.

SCLS is in compliance with 45 CFR § 1614.3(d)(3), which requires oversight and follow-up of the PAI cases. While there were several dormant and untimely closed cases reviewed during the on-site visit, none of these case files had been submitted to LSC in the CSR data submission reporting.

Case file review and interviews revealed that several case files were removed from the CSR data submission due to dormancy or untimely closure. *See e.g.* Case No. 200938000407, this case was opened in June of 2009, and two (2) status letters were sent to the PAI attorney handling the case but no update was received; and Case No. 10-0565479, this case file did not contain any status updates for the end of 2010 or the first part of 2011.

Based on the above stated finding the DR recommended that SCLS adopt a uniform case status/current invoice request policy, which identifies non-responses to the request and alerts the PAI coordinator of the need for immediate, additional follow-up.

In response to the DR, SCLS stated as follows:

“The MAs will review the PAI cases with the PAI coordinator in the same manner and time frame as the staff cases are reviewed. In addition to the PAI coordinator writing the attorney for an update at least once a quarter, the coordinator will also personally call the attorney’s office. The PAI coordinator may also reach out to the client if contact cannot be made with the attorney. If a final order has been issued but not sent to SCLS the coordinator should obtain the Order from the courthouse. Additions to PAI policies will be made to reflect the process for supervision of PAI cases.”

SCLS also drafted a new PAI policy to make certain that oversight is consistent on PAI cases, and provided a copy to LSC for review. OCE reviewed this policy and determined it to be an acceptable policy.

Additionally the review of SCLS’ PAI fiscal activities revealed that SCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614. SCLS achieved its 12.5 % goal with \$755,856 (15.6% of the basic field award amount in 2010) of combined PAI.

Review of the PAI schedule disclosed in the Audited Financial Statements for Fiscal Year Ending December 31, 2010 determined that there was adequate compliance with 45 CFR Part 1614 except for the non-LSC funds expended for PAI. The review of PAI invoices also disclosed that such invoices were itemized and detailed, and included support that the legal work was performed in compliance with the requirements of 45 CFR § 1614.3(d)(3). However,

review of the PAI noted that SCLS did not disclose that non-LSC funds of \$64,248 were used for PAI in 2010. The non-LSC funds should have been disclosed in the PAI supplemental schedule or the footnotes in the Audited Financial Statements.

SCLS should include non-LSC funds used for PAI in its Financial Statement disclosures.

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this requirement. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

**Finding 18: The review of documentation related to SCLS’ payment policies and procedures determined that the program complies with the requirements of 45 CFR Part 1627 (Subgrants and membership fees or dues).**

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 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).

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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.

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.

A limited review of accounting records and detailed general ledger for the years 2009, 2010 and through March 2011, disclosed that SCLS is in compliance with 45 CFR § 1627.4(a), that non-mandatory dues and fees are being paid with non-LSC funds.

OCE's review of SCLS' accounting records and general ledger for the years 2009, 2010, and through March 2011, and discussions with program management found compliance with 45 CFR § 1627.4(a) - Membership fees or dues. The membership fees for NLADA in the amount of \$10,000.00 were paid with non-LSC funds on March 18, 2010.

With regard to subgrants, SCLS has no subgrant relationships using LSC funds. The review of accounting records did not reveal any subgrants.

There are no recommendations or corrective actions required.

**Finding 19: The sample documentation reviewed indicates that SCLS is in compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirements).**

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

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

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who

works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

The review of 17 advocates, timekeeping records selected from SCLS offices for the pay periods ending October 15, 2010 and October 31, 2010 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c).

SCLS does not have the corresponding Quarterly Certification for Part-time Case Handlers on file, since such part-time case handlers do not work for organizations that engage in restricted activities in compliance with 45 CFR § 1635.3(d).

There are no recommendations or corrective actions required.

**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 Letter 10-1 (February 18, 2010).<sup>14</sup>

The sampled files reviewed did not contain a prayer for attorneys' fees prior to December 16, 2009, as such SCLS is in compliance with the requirements of 45 CFR Part 1642. Additionally, a limited review of the SCLS fiscal records, the 2010 AFS, and interviews with the Controller and the Executive Director evidenced that there was \$7,284.46 of attorneys' fees awarded, collected, and retained for cases serviced directly by SCLS that was compliant with the requirements of 45 CFR Part 1642.

There are no recommendations or corrective actions required.

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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 and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

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

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

There are no recommendations or corrective actions required.

**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. Discussions with the Executive Director, the Director of Litigation, and review of the recipient’s policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations 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, the Director of Litigation, and review of the recipient’s policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director, the Director of Litigation, and review of the recipient’s policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director, the Director of Litigation, and review of the recipient’s policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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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).

**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. Discussions with the Executive Director, the Director of Litigation, and review of the recipient's policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in such activity. Discussions with the Executive Director, the Director of Litigation, and review of the recipient's policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

**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

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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).

advocate, a legal right to suicide, euthanasia, or mercy killing, or advocate, or any other form of legal assistance for such purpose. *See* 45 CFR § 1643.3.

None of the sampled files reviewed involved such activity. Discussions with the Executive Director, the Director of Litigation, and review of the recipient's policies, also confirmed that SCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

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

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

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

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

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

**Finding 30: SCLS is in substantial compliance with the requirements of 45 CFR § 1620.6, which requires those 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 review team requested to see copies of the signed written agreements in accordance with this requirement during the visit. With one (1) exception, the Executive Director provided copies of signed statements by the staff in accordance with the requirements of 45 CFR § 1620.6 during the review. SCLS obtained a signed written agreement from this staff member on April 19, 2011.

There are no recommendations or corrective actions required.

**Finding 31: A limited review of SCLS' Accounting Manual and procedures, and internal control policies and procedures, demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2). However, SCLS should ensure that every person involved with the approval and review of the bank reconciliation initial and date it and that all supporting documents be stamped as paid to avoid duplicate payments in accordance with the Accounting Guide for LSC Recipients (2010 Edition).**

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 (1997 & 2010 Edition), 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 (August 2010).

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.

OCE's review of SCLS' accounting policies and procedures manual, accounting records and discussions with program management found that the program has established an adequate internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written Accounting Manual, which was being revised and updated. Further, SCLS' auditor's reports on internal controls for the review period did not identify any deficiencies in the internal controls that could be considered to be material weaknesses.

While on-site, the program provided sample copies of its cash disbursement supporting documentation and monthly bank reconciliations for its general operating accounts. The documentation illustrated that bank statement balances are reconciled to the General Ledger, and with the corresponding approvals, and reconciled by a person with no accounting duties. However, the review disclosed that the records showed no dates as to when they were received, performed, and approved. SCLS should take corrective action and have every person involved with the approval and review of the bank reconciliation sign and date it, in accordance with the Accounting Guide for LSC Recipients (2010 Edition).

Also, SCLS' internal controls policies and procedures are outlined in the program's Accounting Manual. While on-site, using LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (FCR) checklist, OCE interviewed and discussed the program's internal control and accounting policies and procedures which are currently being followed. The results of the FCR checklist inquiries and a review of the above noted documents indicate adequate segregation of duties in that a transaction cannot be completed without someone else's knowledge and/or approval. OCE's review found that the program's internal control and accounting procedures as outlined its Accounting Manual appear to be adhered to and followed by the program in that there was evidence of managerial review and approval.

Additionally, a limited review of payables including payments for 2010 and through March 2011, disclosed adequate supporting documentation and corresponding approvals. However, SCLS does not stamp as "paid" all supporting documents. SCLS should take corrective action and stamp as "paid" all supporting documents to avoid duplicate payments in accordance with the Accounting Guide for LSC Recipients (2010 Edition).

Furthermore, a limited review of reimbursements from nine (9) SCLS offices' petty cash checking accounts, which included the Orangeburg, Spartanburg, Charleston, Greenville, Greenwood, Columbia, Rock Hill, Florence, and Conway offices, disclosed that they were documented with corresponding approval signatures. However, as stated previously, SCLS does not stamp as paid all supporting documents.

Also, a limited review of the VISA credit card payments for: February, April, August, and November 2010; and for February and April 2011 disclosed the following:

- 1) Supporting documents are not being stamped as “paid”, as required by the Accounting Guide for LSC Recipients;
- 2) There were payments made that should have been charged as a PAI cost, but were not. Expenses were incurred in: November 2010, paid by check #33243 for 8145.40; February 10, 2011; paid by check #34232 for \$301.30; and January 12, 2011 paid by check #33969 for \$574.79.

SCLS should take corrective action and allocate a cost to an activity that will demonstrate the total cost of the activity that a funding source is financing, in this case PAI, as required by the Accounting Guide for LSC Recipients.

- 3) Most common costs on the VISA credit card were allocated to the LSC fund even though SCLS has a costs allocation formula to allocate common costs based on 80% to LSC and 20% to non-LSC. Review of the allocation methodology revealed it to be reasonable since the majority of SCLS’ funds are concentrated on three (3) funding sources that could be used to allocate common costs, LSC, State of South Carolina – filing fees, and South Carolina Bar Foundation. SCLS should take corrective action and allocate common costs, especially on the VISA card payments, based on the 80/20% methodology established by SCLS for 2010 and 2011.
- 4) Direct cost allocation is accomplished on the basis of Excel timesheets as all staff do not use the timekeeping in Legal Server. This source of information is used as the basis of charging the employee time to a particular funding source and at times allows allocation of other expenditures to the grant or to other general funding sources.
- 5) The review of the VISA card payments disclosed that it was difficult to trace support documentation to the bank statement payment. SCLS should establish a system to better identify support documentations against their credit card charges on the statements, i.e. numbering the support documentation against the payment on the credit card statement.

In response to the DR, SCLS stated that they have updated their accounting policy to comply with these requirements. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

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

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

1. Verify that the correct case file information is entered and recorded in the automated case management system;

In response to the DR, SCLS stated as follows:

“All closed cases are reviewed by the relating managing attorney. There are times when the advocate may have used an improper closing code and the error is found during the closed case review. There also may be times when the needed update did not get entered into case management. The current SCLS policy is that all closures be verified in case management to make sure the closing information was properly entered into case management. We will reinforce this policy with staff.”

2. Update their ACMS so that it contains a field for clearly documenting an applicant's expenses or other criteria that could justify an over-income waiver in accordance with SCLS' eligibility policy;

In response to the DR, SCLS stated that Legal Server has been changed to require the intake staff to get the necessary information in order to make an exception if the applicant's income is between 125 and 200% of the FPG. SCLS further stated that they are requiring that the information provided specifically address the factors outlined in their income policy. The ACMS will not allow intake staff to move to the next step until this information has been entered. SCLS attached a screen shot of this modification with their response.

3. Conduct periodic training on closure codes to ensure that staff is aware of the applicability of each closing code;

In response to the DR, SCLS stated that as follows:

“SCLS will continue to discuss closing codes during compliance training with staff. All SCLS offices will be visited for compliance trainings before the end of October 2011. Management review of closed cases is intended in part to limit errors in application of closure codes. ”

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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.

4. Review its list of open cases and mark for rejection or otherwise exclude from the CSR data submission all dormant, and inactive, as well as files involving ineligible applicants;

In response to the DR, SCLS stated as follows:

“Our managing attorneys conduct quarterly open case reviews to check for both substantive work and compliance. In the process of reviewing cases, they provide suggestions and deadlines to make certain that cases do not become dormant. In addition, they require closure files (as CSR “no”) when dormant open cases are identified. In addition our compliance administrator systematically checks open files that have not had recent timekeeping to assure that cases do not become dormant. If open files are for ineligible applicants, they are rejected unless there is another grant supporting them. We recognize that some compliance mandates are applicable to all cases regardless of the funding supporting our costs.”

5. Adopt a uniform case status/current invoice request policy for PAI cases which identifies failure to respond to the request for information and alerts the PAI coordinator of the need for immediate, additional follow-up; and

In response to the DR, SCLS stated as follows:

“The MAs will review the PAI cases with the PAI coordinator in the same manner and time frame as the staff cases are reviewed. In addition to the PAI coordinator writing the attorney for an update at least once a quarter, the coordinator will also personally call the attorney’s office. The PAI coordinator may also reach out to the client if contact cannot be made with the attorney. If a final order has been issued but not sent to SCLS the coordinator should obtain the Order from the courthouse. Additions to PAI policies will be made to reflect the process for supervision of PAI cases.”

SCLS also attached a new PAI policy to make certain that oversight is consistent on PAI cases, and provided a copy to LSC for review. The new policy adequately addresses OCE’s concerns.

6. Establish a system to better identify support documentations against the credit card charges on the statements, i.e. numbering the support documentation against the payment on the credit card statement.

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Recommendation. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

## V. REQUIRED CORRECTIVE ACTIONS

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

1. Revise its manual intake form to include screening for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i);

In response to the DR, SCLS stated that they have revised their manual intake form to include screening for reasonable income prospects. SCLS stated that this form will eventually closely mirror the Legal Server intake form. SCLS also stated that some outreach and satellite locations are equipped with wireless internet; so intake can be conducted directly into Legal server.

2. Ensure that all intake staff are trained on the applicability of 45 CFR § 1626.4, Program Letter 06-02 and the Violence Against Women Act 2006 Amendments, and their effects on otherwise ineligible aliens seeking legal assistance;

SCLS further stated that their Language Access Coordinator prepared a PowerPoint presentation in 2011 addressing eligibility for citizens and non-citizens. SCLS stated that all current staff has seen the presentation, and that new staff will see it as hired.

3. Ensure that all intake staff is trained on the applicability of 45 CFR § 1611.5 and the procedures enumerated therein for obtaining a waiver and/or applying authorized exceptions when an applicant is over-income, and an over-income exception approval is obtained for all applicants whose income is over 125% of FPG before they are accepted as clients;

In response to the DR, SCLS stated that Legal Server will has been changed to require the intake staff to get the necessary information to grant an exception if the applicant's income is between 125 and 200% of the FPG. SCLS further stated that the information to grant the waiver must specifically address the factors outlined in our policy and the LSC regulations. Legal Server will not allow the intake staff to move to the next step in the intake process until this has been done. SCLS further stated that the managing attorneys are directed not to assign a case to an advocate until an exception has been granted or there is another fund source for the case. SCLS attached screen shot from the ACMS showing modification made in their intake fields so that intake staff must follow the income and asset exceptions policy.

4. Ensure that staff can associate the attestations signed by walk-in applicants to the applicants' case files if such applicants are accepted for services by LATIS;

SCLS stated that they have updated their walk-in intake procedures so that the citizenship attestations are linked to applicants who are directed to call LATIS. A screen shot showing modification of the Legal Server intake fields to account for walk-in applicants

who call the central intake office after referral from a field office was attached to the response.

5. Ensure that all case files contain citizenship attestations, where appropriate, that are signed and dated pursuant to 45 CFR Part 1626;

In response to the DR, SCLS stated that they are reminding all their staff that anytime someone who is a potential applicant comes into the office for service, the citizenship forms must be signed. SCLS further stated that they will also remind their advocates as follows:

“to always check the file to be certain that the signed citizenship documents are in the file before doing anything on the file including giving C&A, Legal Server will be changed to determine if the call-in applicant got the telephone number from visiting a local office. If so, the attorney must obtain the signed citizenship documents before doing anything on the file including giving C&A. This provision will apply to offices including the centralized telephone intake office. The written citizenship policy will be modified to include the above provisions.”

6. Ensure that each file is in compliance with the requirements of 45 CFR § 1611.9 (Retainer agreements) by reviewing all case files required to have a retainer agreement and verifying that all agreements contain a detailed scope and subject matter of the representation, and are executed in a timely manner;

In response to the DR, SCLS stated that Managing Attorneys have been directed to immediately discuss the circumstances under which retainers must be signed, and remind and train the attorneys under their supervision accordingly.

7. Ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs;

In response to the DR, SCLS stated as follows:

“SCLS will continue to document its legal assistance in each file selected for inclusion in the CSR. SCLS has already trained staff to adhere to this requirement in its on-going compliance training. Managing attorneys will continue to particularly check for this requirement as they conduct case reviews.”

8. Ensure that all cases are timely closed by conducting periodic reviews of case management reports on closed cases, particularly those limited service files that remain open for an extended period of time;

In response to the DR, SCLS stated as follows:

“The SCLS policy is that advocates contact clients at least monthly to inform them of the status of case. In addition, the SCLS policy states, “The decision to end the

provision of assistance to a client is to be made by the advocate who handled the case. Once the decision to stop assistance is made, the file should be closed within 20 days of that decision. This means that all closing procedures should be completed and the file given to the appropriate person for review within two weeks of closure.” Our managing attorney conducted quarterly open case review to check for both substantive work and compliance. In the process of reviewing cases, they provide suggestions and deadlines to make certain that cases do not become dormant. In Addition, our Grant and Compliance Administrator systematically checks open files that have not had recent timekeeping to assure that cases do not become dormant. Also, compliance trainings with staff include procedures for timely case closure.”

9. Ensure that non-LSC funds used for PAI are included in Audited Financial Statement disclosures;

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Corrective Action. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

10. Have every person involved with the receiving, approval, and review of the bank reconciliation sign and date it, as required by the Accounting Guide for LSC Recipients (2010 Edition);

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Corrective Action. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

11. Stamp as “paid” all supporting documents to avoid duplicate payments, as required by the Accounting Guide for LSC Recipients (2010 Edition);

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Corrective Action. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

12. Allocate a cost to an activity that will demonstrate the total cost of the activity that a funding source is financing, as required by the Accounting Guide for LSC Recipients; and

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Corrective Action. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.

13. Allocate common costs on the VISA credit card payments based on the 80/20% (LSC/non-LSC funds) methodology established by SCLS for 2010 and 2011.

In response to the DR, SCLS stated that they have updated their accounting policy to comply with this Corrective Action. A copy of “Additions to Accounting Policies” was provided with SCLS’ response to the DR. The new policy adequately addresses OCE’s concerns.



## South Carolina Legal Services

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July 22, 2011

Lora M. Rath, Acting Director  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K St. NW 3<sup>rd</sup> Floor  
Washington DC 20007-3522

RE: CSR/CMS visit, Recipient 641030

Dear Ms. Rath:

This acknowledges your letter dated June 23, 2011 wherein you enclosed the Draft Report reflecting the OCE site visit to SC Legal Services during the week of April 18, 2011. The assessment team was professional and helpful and we will be glad to accept your offer in your letter to be available as a resource on compliance-related matters.

Even before we knew about the OCE plans for a visit, we had undertaken a compliance "road show" throughout SC where we presented a PowerPoint presentation with 68 frames on compliance and a self-test at the end. This process is on-going; managing attorneys invite the presentations; SCLS provides this training for new staff systematically. The presentation covered closure codes, eligibility, income exceptions, other grants and much more. To resolve issues about "who is the client?" and household composition when a disabled adult child applies for representation, we drafted policies on financial eligibility tracking 45 CFR 1611 with active help from LSC; in addition, we worked on a new internal policy for handling "walk in" applicants who later call our centralized intake line or an SCLS branch office for intake. We also received LSC guidance on the creation of this policy. We decided in latter 2009 to abandon our existing case management system and we are now customers of Legal Server. In the transition, we moved from paper income waivers to a mechanized system. We noticed that the new system did not have a clean way to specify the grounds for an income exception. Based on feedback from OCE we have also revised our approach to income and asset exceptions to better mirror the OCE team's expectations.

The draft report is faithful to the information the team shared at the exit conference. We recognize that we had a good visit; however we are not complacent and we are grateful for the



Lora Rath  
July 22, 2011  
Page 2

suggestions. Compliance is a challenge that is never finished.

I have attached a list of a limited number of responses to specific feedback in the report. We appreciate your willingness to go back and review them. If you want additional explanation, please do not hesitate to contact us. I am also attaching a policy we created on "walk in" intakes. I am also attaching the corrective action plan I provided to the OCE team at the exit conference.

Since the exit conference we have conducted a management team meeting in Columbia on June 23, 2011. Much of the agenda was devoted to a review of the OCE visit and we presented a new "Compliance Revisited" PowerPoint for the managing attorneys. In addition we have visited offices in Conway, Florence, Columbia, Charleston and Greenville (all since April 21, 2011) to review the specific issues raised during the OCE visit. We will visit the remaining offices shortly. I am attaching (1) the revised paper intake form that asks about prospective income (2) a PowerPoint prepared by our Language Access Coordinator in 2011 addressing eligibility for citizens and non-citizens—all current staff have seen the presentation. New staff will see it as they are hired; (3) screen shot showing modification of our intake fields so that intake staff follow the income and asset exceptions policy found at 45 CFR 1611.5 (4) screen shot showing modification of our intake fields to account for walk-in applicants who later call the central intake office after referral from a field office (5) a series of accounting department policies that address the required corrective actions pertinent to the accounting department. We are also attaching a new PAI policy to make certain that oversight is consistent on PAI cases. Further, we are including intake training at our fall statewide training conference where attendance is mandated for all staff.

When the report is final, will you please include our description of the steps we have taken, as outlined here, to correct and strengthen our record of compliance? In closing, I sincerely appreciate the candor, practical suggestions, constructive criticism and respect conveyed by the OCE team. Though it goes without saying, I would like to thank LSC for the manner in which its team conducted this visit. I genuinely believe that the service to our clients will benefit from what we learned.

Very truly yours,

  
Andrea E. Loney  
Executive Director

cc: Sheila Mashhadishafie  
enclosures

## **SCLS Response to Cases Cited in Report**

## LSC Draft Report

- Page 14**      10-0564826 This case is listed as one of the "limited number of case files with evidence that services were provided to an over income client without the appropriate exception approval." However, this case is III-B fund code and all timekeeping was III-B. It was closed as CSR No.
- 20074200706 Income waiver in file; proper factors not stated. Indicated client was seeking Medicaid (implies medical expenses) and financial declaration indicates she has medical expenses of \$45/month
- 200942000179 is cited for no income waiver; however income waiver is present. (Case did not have needed asset waiver and is cited on page 15 for that).
- 10-0570275 Case does have waiver -- may need proper factors stated. The case facts contain a very detailed listing of the client's monthly bills. She owes a mortgage of \$416 on her primary residence. She is in arrears. In addition she owes five finance companies a total of \$511 every month. Her monthly bills exceed all monthly income. On this basis, a waiver could be granted.
- Page 16**      10-0570859 listed in report as missing citizenship however there was never in-person contact so signed attestation not required.
- Page 17**      Scope of retainer -- 200823000444 Separate maintenance listed as scope. Why is this not sufficient? In SC separate maintenance is an alternative to divorce.
- Page 19**      (top paragraph) 10-0567549 PAI case in which client withdrew and there was no evidence of legal work. At the point of the LSC review, this case was still open. The draft report stated lack of evidence of legal work and referenced CSR Handbook 5.6 which states "Such description should be sufficient to document that the assistance is a case and to support the level of assistance selected by the program to close the case." The case was rejected in late April and therefore was not closed and would not have been "closed" or reported to LSC.

## **SCLS Walk-In Policy Implemented**

## SCLS POLICY

### **Walk in Applicants Who Have Telephone Intake**

If an applicant seeks service by coming into a local office and is given the Intake Office number or given a local office number to call for a telephone intake, the local office staff is required to obtain signed citizenship verification on the SCLS standardized citizenship verification form or by the review of appropriate documentation as applicable in conjunction with the SCLS Eligible Alien standardized form. Please refer to Citizenship or Alien Eligible Requirements elsewhere in this manual.

The signed citizenship attestation or applicable documentation of eligibility of non-citizens shall be filed alphabetically and the file maintained at the receptionist's desk in the local office. During intake, all applicants shall be asked, "Were you given this phone number while in a Legal Services office? If yes, what office and did you sign documents?" There will be a notation in Legal Server as to the response(s).

Prior to providing any legal assistance (including advice or brief service), the managing attorney or designee shall check Legal Server to determine if the telephone intake applicant was given an intake phone number while in a Legal Services office.

For telephone intake cases with notation of in-person contact, the local office managing attorney or designee shall scan and upload to the Legal Server case file the required citizenship or eligible alien documentation. If the case is accepted for advice by the Intake Office, the Intake Office managing attorney will email the office designee with cc to local managing attorney asking that the documents be uploaded to the Legal Server case file.

**No assistance shall be provided absent signed citizenship attestation, alien eligible form and documentation of non-citizens as applicable except for an applicant such as a victim of domestic abuse, sexual assault, trafficking or qualifies for a "U" visa.** Please see LSC Program Letter 2006-02 attached to this manual.

## **SCLS Corrective Action Plan**



## South Carolina Legal Services

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# Plan of Action for Improving SCLS Compliance

Based on the OCE review, the following steps have been or will be taken:

#### 1) Retainers

Managing Attorneys will immediately discuss the circumstances under which retainers must be signed. Action to be taken includes continuing to train on the issues and MAs continuing to remind attorneys.

#### 2) Closing Code

Action will be taken including training with MAs and the MAs offering additional training to staff on closing codes. Also there will be more careful review of closing codes by MAs.

#### 3) Manual Intake Form

We have added question about prospective income. This form will eventually closely mirror the legal server intake form. Some outreach and satellite locations are equipped with wireless internet. Alternatively air cards could be used to reduce the need for paper intakes.

Our consistent practice will be to remind staff that if applicant completes the manual intake form, staff must still ask the applicant the income and asset questions as a means of verifying the information.

#### 4) Citizenship and Qualified Non-citizens forms

Offices will again be reminded that anytime someone who is a potential applicant comes into the office for service, the citizenship forms must be signed. Advocates will be reminded to always check the file to be certain that the signed citizenship documents are in the file before doing anything on the file including giving C&A. Legal Server will be changed to determine if the call-in applicant got the telephone number from visiting a local office. If so, the attorney must obtain the signed citizenship documents before doing anything on the file including giving C&A. This provision will apply to offices including the centralized telephone intake office. The written citizenship policy will be modified to include the above provisions.

#### 5) Waiver Factors

Legal Server will be changed to require the intake staff to get the necessary information to grant a waiver if the applicant is between 125 and 200% of the Income guidelines. The information to grant the waiver must specifically address the factors outlined in our policy and the LSC regulations. Legal Server will not



Carl F. Muller – Chairman; Jim Stuckey – Vice Chairman; Nora Harris – 1<sup>st</sup> Vice Chair; Maridoloras Valentin – Secretary; Angela DeAnna Rowe – Treasurer

allow the intake staff to move to the next step in the intake process until this has been done. The MA should not assign a case to an advocate until a waiver has been granted or there is another fund source for the case.

6) Supervision of PAI Cases

The MAs will review the PAI cases with the PAI coordinator in the same manner and time frame as the staff cases are reviewed. In addition to the PAI coordinator writing the attorney for an update at least once a quarter, the coordinator will also personally call the attorney's office. The PAI coordinator may also reach out to the client if contact cannot be made with the attorney. If a final order has been issued but not sent to SCLS the coordinator should obtain the Order from the courthouse. Additions to PAI policies will be made to reflect the process for supervision of PAI cases.

7) Signed Statement of Facts

Again, advocates will be reminded to outline the facts that are to be signed by the client; MAs are reminded to check files for statements of fact.

Respectfully submitted,

BY:   
ANDREA E. LONEY  
EXECUTIVE DIRECTOR

April 21, 2011

# **Updated SCLS Manual Intake Form**

**SOUTH CAROLINA LEGAL SERVICES  
INTAKE FORM**

DATE \_\_\_\_\_ INTERVIEWER \_\_\_\_\_  
 Telephone Intake: Yes No Conflict Check Done: Yes No Who did conflict check? \_\_\_\_\_  
 CASE TYPE and Number: \_\_\_\_\_ CASE ID NUMBER: \_\_\_\_\_

Client Information		Client Information	
<b>Name:</b> (Last/First)		<b>DL:</b>	Other:
<b>SSN:</b>		<b>Employer:</b>	Literate <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Sex:</b>	Male <input type="checkbox"/> Female <input type="checkbox"/>	<b>Empl. Addr1:</b>	Translate <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Race:</b>	B <input type="checkbox"/> W <input type="checkbox"/> H <input type="checkbox"/> NA <input type="checkbox"/> A/P Isl <input type="checkbox"/>	<b>Empl Addr2:</b>	Migrant <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Citizenship:</b>	US <input type="checkbox"/> Alien Elig. <input type="checkbox"/> Alien Inelig. <input type="checkbox"/>	<b>City:</b>	Disabled <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Marital Status:</b>	M <input type="checkbox"/> S <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/>	<b>State:</b>	Veteran <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Date of Birth:</b>	MM/DD/YYYY / /	<b>Zip:</b>	Institution <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Home Telephone:</b>		<b>County:</b>	
<b>Mobile:</b>		<b>Work Phone:</b>	
<b>FAX:</b>		<b>Work Hours:</b>	
<b>Addr1:</b>		<b>Referred By:</b>	
<b>Addr2:</b>			
<b>City/State/Zip:</b>			
<b>County:</b>			

Opposing Party		
<b>Name:</b> (Last/First)	<b>Sex:</b>	Male <input type="checkbox"/> Female <input type="checkbox"/>
<b>Addr1:</b>	<b>Race:</b>	B <input type="checkbox"/> W <input type="checkbox"/> H <input type="checkbox"/> NA <input type="checkbox"/> A/P Isl <input type="checkbox"/>
<b>Addr2:</b>	<b>Height:</b>	
<b>City, State, Zip:</b>	<b>Eyes:</b>	
<b>County:</b>	<b>Hair:</b>	
<b>SSN:</b>	<b>Weight:</b>	
<b>DOB:</b>	<b>Atty's Name:</b>	
<b>DL No.:</b>	<b>Atty's Addr:</b>	

Household Resident's Name(s) (Last/First) <small>Only list those to be counted for financial eligibility</small>	DOB: MM/DD/YYYY	SSN	Relationship	Employer

INCOME PER: W <input type="checkbox"/> B <input type="checkbox"/> M <input type="checkbox"/> S <input type="checkbox"/> Y <input type="checkbox"/>	APPLICANT	SPOUSE	OTHER
Wages:			
Social Security:			
SSI:			
TANF:			
Pension:			
VA:			
Unemployment:			
Worker's Compensation:			
Child Support:			
Alimony:			
Contribution (family/roommate):			
Other:			
Receiving Food Stamps? Yes <input type="checkbox"/> No <input type="checkbox"/> Declined? Yes <input type="checkbox"/> No <input type="checkbox"/> Given Application? Yes <input type="checkbox"/> No <input type="checkbox"/> Needs Assistance with Application? Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>TOTAL INCOME:</b>	\$	\$	\$

Do you have reason to believe that your income is likely to change significantly in the near future? \_\_\_\_\_

If the answer is yes, when will your income change and how much will you make? \_\_\_\_\_

ASSETS – Only assets to be used to determine eligibility	VALUE	AMOUNT OWED	MONTHLY PAYMENT
Cash			
Checking <input type="checkbox"/> Savings <input type="checkbox"/> Other <input type="checkbox"/>			
Home: Own <input type="checkbox"/> Rent: Private <input type="checkbox"/> Public <input type="checkbox"/> Homeless <input type="checkbox"/>			
Land			
Vehicles			
Other			

**CASE FACTS AND CERTIFICATION**

Facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REQUIRED BY PUBLIC LAW 104-134, SECTION 504(a)(8)

Plaintiff, as indicated on the above case notes, signed this statement of facts to comply with the requirements of Section 504(a)(8) of Public Law 104-134. This statement was written in contemplation of litigation. Plaintiff has instructed SCLS to prepare a complaint and the facts contained in this statement form the basis of the complaint. Plaintiff intends to assert and does not waive any right to assert attorney-client privilege or work-product privilege in signing this statement. Plaintiff intends for this statement to be retained in the SCLS files and that it will not be released to any person except for the auditors and monitors described in federal law or pursuant to other applicable court rules or a court order.

The statement of facts is the above case notes

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

# **Citizenship and Eligible Alien PowerPoint**

# CLIENT ELIGIBILITY AND IMMIGRATION STATUS

Jada B. Charley

Language Access Coordinator/Attorney

South Carolina Legal Services

# LSC REGULATION: 45 C.F.R. § 1626.12

- ✘ Always Eligible
  - + Citizens
  - + Lawful permanent residents
  - + Refugees
  - + Asylees

# CITIZENS, PERMANENT RESIDENTS, ASYLEES, REFUGEES

---

- \* Citizens-sign citizenship attestation
- \* Lawful Permanent Residents-Need proof of status in file, amend citizenship attestation to state permanent resident
- \* Refugees-Need proof of status in file, amend citizenship attestation to state refugee
- \* Asylees-Need proof of status in file, amend citizenship attestation to state asylee

## OTHER STATUSES

\* Alien who is

1. Married to a US citizen, or
2. Parent of a US citizen, or
3. The unmarried child under 21 of a US citizen (this would normally make the child a citizen, so not really sure why this is here)

AND

Alien has file an application for adjustment of status to permanent residency

In the file you need proof of relationship to US citizen and proof of filing for adjustment of status

## OTHER STATUSES

- ✘ Alien granted withholding or deferral of deportation or removal
  - + usually done by BCIS for humanitarian reasons, similar to refugees and asylees
  - + get proof and put in file
- ✘ Conditional entrant
  - + usually done by BCIS for humanitarian reasons, similar to refugees and asylees
  - + get proof and put in file

## **OTHER STATUSES**

- × Special Agricultural Workers whose status is adjusted to temporary resident alien under the Immigration Reform Control Act.
- × Citizens of the Commonwealth of the Northern Marianas, Republic of Palau, Federated States of Micronesia, or the Republic of the Marshall Islands; Canadian-born American Indians at least 50% Indian by blood; and members of the Texas Band of Kickapoo.

## H2A AGRICULTURAL WORKERS

---

- ✖ Migrant Division
  - + Can only be represented in certain types of cases
    - × Wages
    - × Employment contract issues
    - × Housing

# **DOMESTIC ABUSE AND CRIME VICTIMS**

- ✘ Victims of Domestic Abuse, battery, extreme cruelty, sexual assault, or trafficking, or those crimes listed in § 101(a)(15)(U)(iii) of the Immigration and Nationality Act
- ✘ Alien Parents of children who, without the active participation of the alien, have been battered, subjected to extreme cruelty, sexual assault, or trafficking, or those crimes listed in § 101(a)(15)(U)(iii) of the Immigration and Nationality Act
- ✘ REPRESENTATION UNDER THESE PROVISIONS HAVE LIMITS

## **LIMITS OF REPRESENTATION FOR DOMESTIC ABUSE, U VISA CRIME VICTIMS, ETC.**

- ✘ The legal assistance provided must help the affected alien or child escape from the domestic violence, sexual assault, trafficking, or covered criminal activity, to ameliorate their effects, or to protect against future domestic violence, sexual assault, trafficking, or criminal activity.
- ✘ They don't have to already have been awarded VAWA or U status in order for us to assist them. Need to document in the case notes how they fall into VAWA or U eligibility (info. about abuse and assistance being requested)

## EXAMPLES FROM LSC

- x Legal assistance can be provided to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, **but** could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children.
- x Similarly, assistance can be provided to secure housing, medical , or income assistance for the abused alien and children so that they would no longer have to be dependent on the abuser, **however,** absent some evidence that subsequent events were the direct result of the abuse, legal assistance cannot be provided to challenge an eviction action by a landlord for non-payment of rent, sue the agency administering the medical assistance program for failure to pay for specific care, or to challenge a cutoff of public assistance for failure to meet work requirements.
- x **Finally, SCLS is permitted to assist the abused alien or child to seek suspension of deportation, or to self-petition for immigrant status.**

## U VISA ELIGIBILITY

\* “U” visa includes crimes such as rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt conspiracy, or solicitation to commit any of the above mentioned crimes or any similar activity in violation of Federal, State, or local criminal law.

## U VISA ELIGIBILITY CONT.

- ★ Eligibility for “U” visa protection requires having been a victim of criminal activity.
- ★ Victims are eligible for “U” visa immigration relief without requiring that the criminal case be ultimately prosecuted or that a conviction for the crime be obtained.
- ★ A “U” visa provides for lawful temporary status for an alien who the Attorney General determines has suffered substantial abuse as a victim of certain criminal activity, possess information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity, and such criminal activity violated US law or took place in the US. Certain family members of a “U” visa applicant may also apply for “U” visa relief.

# SO WHO'S LEFT OUT

- × Undocumented people who are not victims of domestic violence, sexual assault, or potentially eligible for U visa protection
- × People with Temporary Protected Status
- × Non-citizens who cannot prove their status
- × Aliens who are parents, spouses, or children of US citizens who have not filed for permanent residency
- × Students
- × S status
- × Fiances of US citizens or the dependents of fiances
- × SIJS
- × Pretty much everyone not falling into one of the categories previously discussed.

## CHANGES IN STATUS

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- \* If a client was previously eligible under LSC regulations and subsequently become ineligible, then representation should be ceased in accordance with ethical standards. (i.e. Motion to be Relieved) 45 CFR § 1626.9

## **IMPORTANT CONSIDERATIONS**

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- ✘ If you are concerned that the client is lying about their status as a citizen, you may ask for proof, **HOWEVER**, do not do this just because some is LEP or appears to be another race, ethnicity, etc. This is only for cases where there is a valid reason to question the client's citizenship, i.e. the client is giving you contradictory information regarding their citizenship status

# IMPORTANT CONSIDERATIONS

- + If Verification of Citizenship is Required: U.S. Citizenship is established:
  - × If the client submits an original, certified copy, or photocopy that appears to be complete, correct, and authentic, of a (1) U.S. Passport; (2) Birth Certificate; (3) Naturalization Certificate; (4) U.S. Citizenship Identification Card (INS Form I-197); (5) Baptismal Certificate showing a place of birth in the U.S. and a date of baptism within two months of the client's date of birth. The client may also submit any other authoritative document providing evidence of citizenship such as a document issued by INS, by a court, or by any governmental agency.
  - × If a client who does not have the above documentation produces a notarized statement from a third party, not employed by SCLS and who can produce proof of the third party's US citizenship, that the client is a U.S. citizen.

## **IMPORTANT CONSIDERATIONS**

---

- \* Use the Eligible Alien Determination Form and the Eligibility and Immigration Status Policy at SCLS to help you in making this determination
- \* If cases come from LATIS, don't assume the client has an eligible immigration status, check the status and ask for supporting documentation if necessary.
- \* The restrictions on immigration status and representation apply to LSC and non-LSC funds.

## **IMPORTANT CONSIDERATIONS**

- ✘ In the case of US citizen minors as clients, in accordance with LSC guidance, we are allowed to take cases for US citizen children (who meet the financial eligibility requirements) even when their parents are undocumented when the US citizen child has a legally cognizable legal right or interest in the case (i.e. the child is the applicant)



## QUESTIONS?

---

\* Diane Scruggs

\* Tom Bruce

\* Jada Charley

+ 3251

+ [jadacharley@sclegal.org](mailto:jadacharley@sclegal.org)

**Screen Shot of Update to Legal Server for  
Income/Asset Exception Factors**

## Legal Server screen of script for factor questions during intake

### Notes

Show Filters

#### (Liquid Asset Waiver Request Notes)

Posted on 07/15/2011 by Frednk Pfeil - Edit

Applicant is over 125% of the poverty line and below 200% of the poverty line. Applicant is eligible for services under the LTC Grant. The intake questions for exception to the poverty line are below.

Does your income change throughout the year (i.e. seasonal variations in income)? No

Do you have extensive Medical expenses? No.

Do you have fixed debts and obligations, including unpaid Federal, state, and local taxes from prior years? Yes.

IF YES, what are they? App owes the IRS \$12,417.27 and SC state taxes \$7000.

Do you have child care, transportation, and other expenses necessary for employment? No

Do you have expenses associated with age or physical infirmity of resident family members? No

Are there any other significant factors related to your financial inability to afford legal assistance? No.

Note emailed to Thomas Bruce <thomasbruce@slegal.org>

#### (General Notes)

Posted on 06/27/2011 by Thomas A. Trent - Edit

Intake has been transferred to the Greenville office for possible representation under the LTC grant. Tax years in question are 2005 - 2010.

Thanks for your attention to this matter.

Note emailed to frednk Pfeil <fredpfeil@slegal.org>, thomas Bruce <thomasbruce@slegal.org>

#### (SC Script Note)

Posted on 06/27/2011 by Gloria Jefferson

Updated on 06/27/2011 at 12:15 PM by Thomas A. Trent - Edit

WAIVER NEEDED

Does your income change throughout the year (i.e. seasonal variations in income)? No

Do you have extensive Medical expenses? No.

Do you have fixed debts and obligations, including unpaid Federal, state, and local taxes from prior years? Yes.

IF YES, what are they? App owes the IRS \$12,417.27 and SC state taxes \$7000.

Do you have child care, transportation, and other expenses necessary for employment? No

Do you have expenses associated with age or physical infirmity of resident family members? No

Are there any other significant factors related to your financial inability to afford legal assistance? No.

**Screen Shot of Update to Legal Server for Telephone  
Intake of Walk-In Applicants**

Legal Server screen shot when telephone intake, applicant was given number in local office and applicable documents were signed:

SC: Initial Information - Mozilla Firefox  
File Edit View History Bookmarks Tools Help  
LegalServer.org https://sc.legalserver.org/matter/process/x/dynamic\_4/  
Most Visited Getting Started Latest Headlines  
SC: Initial Information  
Initial Information  
Timer  
Begin new timer for this intake   
Initial information  
Intake Date\* 07/21/2011  
(mm/dd/yyyy)  
Intake Office\* LATIS  
Intake Program\* Staff  
Applicant Identifiers  
Intake Type\* Telephone  
Was this telephone number given while at SCLS Office?\*  Yes  No  
Office that Provided Telephone Number\* Spartanburg Office  
Were documents signed while at SCLS Office?\*  Yes  No  
PRIOR to providing any legal assistance including advice or brief service, the signed citizenship attestation, verification of eligible alien status or documentation of approved exception MUST be attached to this file.

Legal Server screen shot when telephone intake, applicant was given number in local office and applicable documents were not signed:

SC: Initial Information - Mozilla Firefox  
File Edit View History Bookmarks Tools Help  
LegalServer.org https://sc.legalserver.org/matter/process/x/dynamic\_4/  
Most Visited Getting Started Latest Headlines  
SC: Initial Information  
Initial Information  
Timer  
Begin new timer for this intake   
Initial information  
Intake Date\* 07/21/2011  
(mm/dd/yyyy)  
Intake Office\* LATIS  
Intake Program\* Staff  
Applicant Identifiers  
Intake Type\* Telephone  
Was this telephone number given while at SCLS Office?\*  Yes  No  
Office that Provided Telephone Number\* Spartanburg Office  
Were documents signed while at SCLS Office?\*  Yes  No  
Applicant went to local office seeking intake. PRIOR to providing any legal assistance including advice or brief service, the signed citizenship attestation, verification of eligible alien status or documentation of approved exception MUST be attached to this file.

**Updates to Accounting Policy based on LSC Review  
and Recommendation**

## ADDITION TO ACCOUNTING POLICIES

### **Addition to PAI Policy**

Support and expenses relating to the PAI effort must be reported separately in the year-end audit. All LSC funded expenditures to PAI will be tracked during the year and included in Audited Financial Statement disclosures. In addition, all non-LSC funded expenditures will be tracked during the year in the same manner and included in Audited Financial Statement disclosures.

### **Addition to the Bank reconciliation Policy**

Each person who receives, approves or reviews the bank reconciliation must sign and date the bank reconciliation form.

### **Addition to the Accounts Payable Policy**

Upon issuance of a check, the accounting assistant will immediately stamp paid on the invoice and all other supporting documentation.

### **Addition to the PAI Policy**

LSC requires 12.5% of its grant to be allocated to Private Attorney Involvement (PAI). Staff personnel cost for the PAI area is based on staff time assigned and recorded on the excel timesheet. PAI operating costs is identified on the invoice/payable voucher and tracked accordingly for yearend reporting. An allocation for indirect staff cost shall be made with consideration for budget constraints.

### **Addition to the Cost Allocation Policy**

The Controller will establish an allocation annually after the annual budget for the organization has been approved. The Allocation system will first identify all those funding sources that will pay for only specific expenditures. The second tier of allocation will be those grants that will pay a portion of overhead or administrative expenses. The final tier of the allocation system will be those funding sources that will pay allowable expenses (except those specifically against funding policy) based on the annual revenue percentage.

**Recommendation Implemented:**

**Addition to Credit Card Policy**

Each transaction on the monthly credit card billing statement will be assigned a transaction number and supporting documentation for each credit card item numbered accordingly. The accounting assistant prepares a credit card schedule of transactions listing each transaction number, vendor, description of transaction, amount, account code(s) and other required comments and notations. The credit card schedule must be prepared in advance of the payment issuance and is filed along with supporting documents within the accounts payable file. See the attached credit card support schedule.



## **PAI Supervision Policy Addition**

## **PAI SUPERVISION AND OVERSIGHT**

At least once per quarter, the Managing Attorney shall conduct a Case Review of all open PAI cases. To aid in this review, the PAI Coordinator shall run the Case Review Report from Legal Server. The Managing Attorney shall review the Case Review Report and discuss any potential problems with the PAI Coordinator. The PAI Coordinator shall then take any and all necessary steps to correct such problems. Please see "Monitoring Cases" policy of the SCLS PAI Protocol.

At least two of the case reviews each year should be a formal case review with the Managing Attorney and the PAI Coordinator. The formal case review may be done more often in the event the Managing Attorney or another member of management believes this to be necessary. The Case Review Report and the activity report for each open case shall be used in conjunction with this review. Formal reviews will check for compliance documents in addition to reviewing substantive legal work.

Every September, the Grants and Compliance Administrator shall review Legal Server reports for issue spotting to include dormancy and cases that appear to need to be closed. The Grants and Compliance Administrator will relay any potential problems to the appropriate Managing Attorney. The Manager Attorney will ensure that proper action is taken with regard to these potential problems.



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September 12, 2011

Sheila Mashhadishafie  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K Street NW, Third Floor  
Washington, DC 20007-3522

RE: CSR/CMS visit, Recipient 641030

Dear Sheila:

Thank you for your email I received earlier today in reference to the recommendations and corrective actions in the OCE draft.

**Recommendation #4:** Our managing attorneys conduct quarterly open case reviews to check for both substantive work and compliance. In the process of reviewing cases, they provide suggestions and deadlines to make certain that cases do not become dormant. In addition, they require closure of files (as CSR “no”) when dormant open cases are identified. In addition our compliance administrator systematically checks open files that have not had recent timekeeping to assure that cases do not become dormant. If open files are for ineligible applicants, they are rejected unless there is another grant supporting them. We recognize that some compliance mandates are applicable to all cases regardless of the funding supporting our costs.

**Corrective Action #7:** We have modified our attached “walk in” policy to insure that the intake office never treats a new intake as a telephone intake if the applicant has been seen at a branch office. We have trained the managing attorneys and all intake staff on this policy.

**Corrective Action #8:** We reworked out citizenship attestation forms during April 2011 just before the OCE visit to assure that dates are always consistently filled out and to insure that no work on a file is started until it is established that the applicant is either a US citizen or eligible alien or eligible pursuant to Program Letter 2006-02. SCLS staff and management are completely committed to compliance with 45 CFR 1626.



*Carl F. Muller – Chairman; Jim Stuckey – Vice Chairman; Nora Harris – 1<sup>st</sup> Vice Chair; Maridolores Valentin – Secretary; Angela DeAnne Rowe – Treasurer*

Sheila Mashhadishafie

September 12, 2011

Page 2

Thank you again for giving me the opportunity to clarify our original response. Do not hesitate to call on me in the future if I can be of service to you.

Very truly yours,

A handwritten signature in blue ink that reads "Andrea". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrea E. Loney  
Executive Director

sh

Enclosure

## SCLS POLICY

### Walk in Applicants Who Have Telephone Intake

If an applicant seeks service by coming into a local office and is given the Intake Office number or given a local office number to call for a telephone intake, the local office staff is required to obtain signed citizenship verification on the SCLS standardized citizenship verification form or by the review of appropriate documentation as applicable in conjunction with the SCLS Eligible Alien standardized form. Please refer to Citizenship or Alien Eligible Requirements elsewhere in this manual.

The signed citizenship attestation or applicable documentation of eligibility of non-citizens shall be filed alphabetically and the file maintained at the receptionist's desk in the local office. During intake, all applicants shall be asked, "Were you given this phone number while in a Legal Services office? If yes, what office and did you sign documents?" There will be a notation in Legal Server as to the response(s).

Prior to providing any legal assistance (including advice or brief service), the managing attorney or designee shall check Legal Server to determine if the telephone intake applicant was given an intake phone number while in a Legal Services office.

For telephone intake cases with notation of in-person contact, the local office managing attorney or designee shall scan and upload to the Legal Server case file the required citizenship or eligible alien documentation. If the case is accepted for advice by the Intake Office, the Intake Office managing attorney will email the office designee with cc to local managing attorney asking that the documents be uploaded to the Legal Server case file.

**No assistance shall be provided absent signed citizenship attestation, alien eligible form and documentation of non-citizens as applicable except for an applicant such as a victim of domestic abuse, sexual assault, trafficking or qualifies for a "U" visa. Please see LSC Program Letter 2006-02 attached to this manual.**



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September 20, 2011

Shila Mashhadishafie  
Program Counsel III  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K St. NW 3<sup>rd</sup> Floor  
Washington DC 20007-3522

Re: CSR/CMS visit, Recipient 641030

Dear Shila:

Thank you for your email in reference to the recommendations and corrective actions in the OCE draft report.

**Recommendation #1:** All closed cases are reviewed by the related managing attorney. There are times when the advocate may have used an improper closing code and the error is found during the closed case review. There also may be times when the needed update did not get entered into case management. The current SCLS policy is that all closures be verified in case management to make sure the closing information was properly entered into case management. We will reinforce this policy with staff.

**Recommendation #10:** SCLS will continue to discuss closing codes during compliance trainings with staff. All SCLS offices will be visited for compliance trainings before the end of October 2011. Management review of closed cases is intended in part to limit errors in application of closure codes.

**Recommendation #11:** The SCLS policy is that advocates contact clients at least monthly to inform them of the status of case. In addition, the SCLS policy states, "The decision to end the provision of assistance to a client is to be made by the advocate who handled the case. Once the decision to stop assistance is made, the file should be closed within 20 days of that decision. This means that all closing procedures should be completed and the file given to the appropriate person for review within two weeks of closure." Our managing attorneys conduct quarterly open case reviews to check for both substantive work and compliance. In the process of reviewing cases, they provide suggestions and deadlines to make certain that cases do not



Carl F. Muller – Chairman; Jim Stuckey – Vice Chairman; Nora Harris – 1<sup>st</sup> Vice Chair; Maridolores Valentin – Secretary; Angela DeAnne Rowe – Treasurer

Shila Mashhadishafie  
Page Two  
September 22, 2011

become dormant. In addition, our Grants and Compliance Administrator systematically checks open files that have not had recent timekeeping to assure that cases do not become dormant. Also, compliance trainings with staff include procedures for timely case closure.

A new PAI Supervision policy was implemented including that Managing Attorneys conduct quarterly case reviews with PAI coordinators. The policy also states that the Grants and Compliance Administrator shall review Legal Server reports for issue spotting to include dormancy and cases that appear to need to be closed. The Grants and Compliance Administrator will relay any potential problems to the appropriate Managing Attorney. The Manager Attorney will ensure that proper action is taken with regard to these potential problems. The PAI reports for September 2011 have already been run.

Thank you again for giving me the opportunity to clarify our original response. Do not hesitate to call on me in the future if I can be of service to you.

Very truly yours,



Andrea E. Loney  
Executive Director

sh

**From:** Diane Scruggs [mailto:dianescruggs@sclegal.org]  
**Sent:** Thursday, October 06, 2011 3:00 PM  
**To:** Shila Mashhadishafie  
**Cc:** Andrea Loney; Tom Bruce; Shirley Henry  
**Subject:** RE: South Carolina Legal Services - Draft report response

Shila, thank you for giving us another opportunity to follow-up on the draft report. Below is the SCLS response to "Ensure that each case reported to LSC contains a description of the legal assistance provided to the client. Cases lacking assistance should be deselected from CSRs" :

**SCLS will continue to document its legal assistance in each file selected for inclusion in the CSR. SCLS has already trained staff to adhere to this requirement in its on-going compliance training. Managing attorneys will continue to particularly check for this requirement as they conduct case reviews.**

Thanks again.

Diane

*Diane P. Scruggs*

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