



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Southern Arizona Legal Aid, Inc.
Case Service Report/Case Management System Review
May 16-20, 2011

Recipient No. 703050

I. EXECUTIVE SUMMARY

Finding 1: SALA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were limited instances of inconsistent information in the ACMS and the case files.

Finding 2: SALA's intake procedures and case management system do not support the program's compliance related requirements. Several exceptions were noted.

Finding 3: SALA is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for applicants whose income does not exceed 125% of the Federal Poverty Guidelines. However, as noted in Finding 2, SALA's board-approved income policy is not being followed consistently.

Finding 4: SALA is in substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed.), § 5.4. However, as noted in Finding 2, SALA's board-approved asset policy is confusing and is not being consistently applied.

Finding 5: SALA is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Several exceptions were noted.

Finding 6: SALA is in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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

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

Finding 9: SALA is in non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Several exceptions were noted.

Finding 10: SALA's application of the CSR case closure categories is inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). Several exceptions were noted.

Finding 11: SALA is in non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3 regarding the timely closing of cases. Several exceptions were noted.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. Two sets of duplicates were identified.

Finding 13: Review of the recipient's policies, and the list of attorneys who have engaged in the outside practice of law, revealed that SALA 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 review of SALA's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 17: SALA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of the PAI case files were in substantial compliance with 45 CFR § 1614.3(d)(3).

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

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

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

Finding 21: Sampled cases reviewed 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: SALA is in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

Finding 31: A limited review of SALA's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.), with one exception.

II. BACKGROUND OF REVIEW

On May 16 through 20, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site review at Southern Arizona Legal Aid, Inc. ("SALA"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of six (6) attorneys and one (1) fiscal analyst. Five (5) of the attorneys were OCE staff members; the remaining attorney was a temporary employee.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that SALA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed SALA 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 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)²; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 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 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).

In accordance with the approved work plan, a total of 650 case files were reviewed. OCE reviewed files from the main office in Tucson, and the branch offices in Bisbee, Casa Grande, Lakeside, Sacaton, and Whiteriver. OCE also reviewed Nogales and Sells (Tohono O'odham Tribe) cases, former branch offices that have recently been incorporated into the Tucson office.

SALA 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). SALA was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

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

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

A summary of the total files reviewed by the OCE team is as follows:

	Open	Closed '11	Closed '10	Closed '09	TOTAL
Staff	88	72	198	120	478
PAI	30	25	30	30	115
Staff Non-CSR	27	15	0	0	42
PAI Non-CSR	10	5	0	0	15
TOTAL	155	117	228	150	650

One hundred eighty-three (183) of the files reviewed were targeted; the remaining cases were randomly selected.

By letter dated August 12, 2011, OCE issued a Draft Report (“DR”) detailing its findings, recommendations, and required Corrective Actions regarding the May 16 through 20, 2011, CSR/CMS visit. SALA was asked to review the DR and provide written comments within 30 days. On September 12, 2011, SALA requested, and received, an extension of time in which to submit its comments. By letter dated September 29, 2011, SALA indicated that there were a few discrepancies in the DR; however, this did not require any changes or modifications to the issued Corrective Actions or findings of this report. OCE has made such revisions as it deems warranted. SALA’s comments to the DR did not include individualized responses to each of the Required Corrective Actions and did not describe the individualized steps that are being taken, or that will be taken, in their efforts to implement the Required Corrective Actions. SALA stated, however, that it is currently implementing the issued Corrective Actions with regard to its 2011 cases. SALA’s comments are reflected in this Final Report and have been attached as an appendix hereto.

III. FINDINGS

Finding 1: SALA's automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were limited instances of inconsistent information in the ACMS and the case files.

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

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

However, a small number of sampled files reviewed revealed instances where the information in the ACMS did not match the information in the case file or on case lists provided to LSC. Two (2) files lacked consistent case closure category information. *See* closed 2011 Case No. 10E-2125979 (the file and the ACMS indicated that the case was closed with an "M", an internal code used by SALA to indicate that the file is a matter and not a case, but the case list provided to LSC indicated that the case had been closed with case closure category "A" (Counsel and Advice)) and closed 2011 Case No. 09E-3117191 (the case closure category in the file differed from the case closure category on the case list). Two (2) sampled files contained missing information in essential eligibility fields. *See* closed 2010 Case No. 10E-1123284 (the intake printout in the file failed to contain the number of persons in the applicant's household, as the household field was zero (0)) and closed 2010 Case No. 08E-1105516 (there was no information recorded in the assets field nor was the assets "categorically eligible" field checked). A few sampled files contained inconsistent reporting information. *See* open 2010 Case No. 10E-2131032 (the case was listed as "Non-LSC Reportable" on the case lists provided to LSC, however the file reflected that the case met all eligibility requirements and should be reported in the CSR data submission), closed 2011 Case No. 10E-2126681 (a case coded as a staff case when in fact it was a PAI case and should have appeared on the PAI case list), and closed 2010 Case No. 10E-2123358 (the problem code in the file was "99" (Other Miscellaneous) when the legal work reflected that the case was a tort defense advice case and, therefore, the problem code should have been "94" (Torts)). Other files with identified exceptions included closed 2011 Case No. 11E-1131648 (the file appeared on both the "open" and "closed" 2011 case lists. The "open" case list indicated that that the file had been closed on 4/7/11, whereas the closed 2011 case list indicated that the file had been closed on 3/16/11) and open Case No. 07-1089907 (the information in the file indicated that it was closed in 2007 and, therefore, it should not have appeared on the "open" case list. This case should be closed on the ACMS in such a manner as to ensure that it is not reported in future CSR data).

SALA should make certain that the ACMS and procedures utilized will ensure that information necessary for the effective management of cases is accurately and timely recorded so that

congruence is maintained between the information in the case files and the ACMS. While SALA conducts compliance oversight with their advocate staff, SALA may need to conduct periodic formalized compliance reviews with its intake staff. SALA should develop additional case closure procedures to ensure the consistent maintenance of information in both the ACMS and the case file, such as having case handlers reconcile the information contained in the file with that yielded by the ACMS after the initial intake is prepared, and periodically throughout the duration of the case, specifically as it relates to problem codes, PAI versus staff designations, and information recorded in eligibility fields. Periodic, effective, and comprehensive management oversight review of cases may be all that is necessary to identify the patterns of error or the people in need of targeted assistance.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 2: SALA’s intake procedures and case management system do not support the program’s compliance related requirements. Several exceptions were noted.

Tucson Office

The following is an assessment of the intake procedures and case management systems of the main office in Tucson. Please note that SALA closed its Nogales and Sells branch offices prior to the LSC visit and incorporated their service areas into the Tucson office. Therefore, the assessment of the intake practices for those offices is included in the Tucson analysis. One (1) intake staff member previously assigned to the Nogales branch office was interviewed.

Centralized Intake

Presently SALA uses a centralized intake and limited assistance hotline model. Centralized intake is located in the Tucson office and has the capacity to serve the entire SALA service area but, as each individual branch office conducts its own intake, centralized intake is merely a back-up intake resource for all offices except the Tucson, Sells, and Nogales service areas. SALA’s centralized intake and hotline system directs each caller into a telephone-holding queue. Intake staff members, who are predominantly intake paralegals, answer calls by order of time called. Intake staff will complete the intake but do not provide legal assistance. After the intake is completed, the intake staff moves on to answer the next call. The intake is then reviewed by the Intake Managing Attorney to determine case acceptance, level of service, or whether to transfer the application to another branch office or the Volunteer Lawyer’s Program. The Intake Managing Attorney and Intake Attorneys provide advice and brief services by telephone. Less frequently, the Managing and Intake Attorneys provide extended services for hotline intake clients. SALA’s practice is to obtain written citizenship attestations or documentation of eligible alien status and retainer agreements for all extended service cases.

In-Person Intake

The centralized intake staff also conducts in-person intakes for those applicants appearing at the Tucson office, for emergencies, and for applicants unable to access the automated intake system.

Walk-in applicants are given an Intake Pre-Screen Form to complete by the office receptionist. The receptionist checks for conflicts and verifies the applicant's citizenship or eligible alien status. The intake staff reviews the Intake Pre-Screen Form with the applicant and enters it into the ACMS and proceeds to conduct a full eligibility screening in the ACMS. Intake staff members are consistent in the use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks, verify citizenship, and store electronic reporting data. Intake staff demonstrated familiarity with program priorities, the citizenship and alien eligibility requirements of 45 CFR Part 1626, and they report that they require documentation of eligible alien status before conducting an intake. SALA maintains a standard retainer agreement.

Outreach

Outreach is provided by the Tucson office. During outreach, the applicant completes an Intake Pre-Screen Form, and an advocate checks for conflicts and obtains written citizenship or eligible alien documentation, as required. The intake is entered into the ACMS by remote access. No legal advice is provided during outreach. Outreach intakes are then reviewed by the Managing Attorney for a case acceptance determination.

Case Acceptance, Supervision, and Closure for Centralized and In-Person Intake

Once an Intake Attorney provides limited services for a client, the case is either closed or it is "referred" to a program advocate or the Volunteer Lawyer's Program ("VLP") for other services. The attorney electronically transfers the intake to the appropriate advocate for acceptance. Upon acceptance of the referral, the advocate changes the office and advocate codes on the intake. The Intake Managing Attorney reviews the open lists every day to ensure that the advocates have accepted all cases and to ensure against duplicate reporting. During on-site intake observations and interviews, intake screeners failed to conduct duplicate checks. It appears that this check is performed by SALA management. The Managing Attorney reviews cases for dormancy daily by reviewing all cases that have been open for one month without any legal activity noted to ensure the timely closing of all cases. Cases are randomly reviewed for financial eligibility accuracy.

Bisbee, Casa Grande, Lakeside, Sacaton, and Whiteriver Offices

The following is a general summary of the intake policies and procedures in SALA's branch offices:

Intake staff members in each branch office conduct telephone or in-person intakes for applicants with emergencies, those who appear in person, and for individuals unable to access the centralized intake system. Walk-in applicants are pre-screened, with most offices completing a Pre-Screen Intake Form identical to the form utilized in Tucson, so conflicts and citizenship status are checked before a complete intake occurs. The intake staff then reviews the Pre-Screen Intake Form with the applicant and enters it into the ACMS. Intake staff will then proceed to conduct a full eligibility screening in the ACMS. The intake staff is consistent in their use of the ACMS to conduct income and asset eligibility screenings, collect demographic information, perform conflict checks, verify citizenship, and store electronic reporting data. Intake staff

demonstrated familiarity with program priorities and the citizenship and alien eligibility requirements of 45 CFR Part 1626, and some branch offices also reported that they require documentation of eligible alien status before conducting an intake. The intake staff completes the intake and forwards it to the Managing Attorney who determines whether to accept it immediately for information, referral, advice, or brief services, or whether to staff it during the weekly staff meeting. The intake can either be summarily rejected by the Managing Attorney or it can be rejected after consideration during the weekly staff meeting. Rejection letters are sent to applicants whose cases are not accepted for representation. The Managing Attorney reviews every case prior to closure using a Case Closure Checklist. Open case lists are reviewed quarterly for dormancy to ensure timely closing. The Managing Attorney supervises the legal work of advocates by case discussion and quarterly case reviews. Case lists and queries are run to ensure against duplicate reporting. Cases are randomly reviewed for financial eligibility accuracy.

Outreach

Outreach is conducted in most offices as a method of conducting intake within the community, with case acceptance being determined at a later time. Only the Bisbee Office has a paralegal who meets with applicants that have been pre-screened by telephone to provide services such as document preparation and to sometimes provide legal advice after consultation with an attorney. During outreach, branch offices have applicants complete the Intake Pre-Screen Form. Every effort is made to check conflicts on-site. The intake is then entered into the ACMS by remote access, if possible. If remote access is not possible, the intake is entered into the ACMS upon return to the office. Written citizenship attestations or alien eligibility documentation is obtained during outreach. The Managing Attorneys review the intakes collected for case acceptance determination and provide oversight and supervision of the services provided.

Compliance concerns identified during the review

SALA's intake procedures and case management system do not support the program's compliance related requirements as several exceptions were noted.

ACMS defaults

There were defaults in essential categories identified, specifically in fields of household members, total assets, total income, and total expenses. The CSR Handbook contains a limitation of defaults in the case management systems. Fields critical to eligibility determinations may not have defaults. Fields determined to be critical to eligibility are: income, assets, number in the household, citizenship/eligible alien status, and LSC eligibility. See CSR Handbook (2008 Ed.), § 3.6 and LSC Program Letter 02-6 (June 6, 2002). SALA must resolve this issue immediately through a re-programming of the ACMS to delete all defaults in essential categories.

Reasonable Income Prospects

SALA's Pre-Screen Intake Form does not contain an inquiry into an applicant's reasonable income prospects, nor did interviewed staff members report inquiring into these prospects during onsite observations of the intake process and during interviews. 45 CFR § 1611.7(a)(1) requires SALA to inquire into the reasonable income prospects of all applicants during every eligibility determination and note this inquiry. The inquiry may be noted in the case file or in the ACMS. SALA is required to ensure that there is an inquiry into the reasonable income prospects of all applicants, and must document this inquiry during every financial eligibility screening conducted pursuant to 45 CFR § 1611.7(a)(1).

Income Eligibility

While SALA staff is familiar with the income ceilings set by SALA and the authorized exceptions to income for those applicants with incomes between 125% and 200% of the Federal Poverty Guidelines ("FPG"), many staff interviewed reported that they do not apply these factors; but rather, that they assign these over-income cases to alternate funding sources. However, case review evidenced that over-income cases supported with non-LSC funds are mistakenly being designated as LSC reportable cases. *See* open Case No. 07-1087490. Additionally, case review evidenced that over-income cases are being reported to LSC in the CSR data submission. *See* closed 2010 Case Nos. 09E-9111401 and 10E-9120979. The incidence of over-income cases being mistakenly identified as LSC reportable on SALA's case lists and CSR data submissions may be reduced if SALA requires its screeners to document the expenses authorized by 45 CFR Part 1611, as contained in its financial eligibility policies, for all applicants with household incomes between 125% and 200% of FPG.

SALA's failure to apply its board-adopted authorized exceptions consistently in all offices reviewed is a compliance issue. While 45 CFR § 1611.5(a) does not require recipients to adopt policies to qualify individuals with incomes that exceed 125% of FPG, the board has chosen to require staff to consider the regulatory factors and, accordingly, program staff are bound by such a policy.³ Some staff report that if they are considering these factors, they apply them as a "spend down" rather than applying a factor analysis to determine eligibility. SALA's policies and 45 CFR § 1611.5(a)(4) only require the program to conduct a factor analysis. Some staff members were not aware of the authorized expenses exception for applicants whose household incomes exceed 200% of FPG, indicating that those applicants would be over LSC income guidelines and would not be eligible for LSC funding. The implementation of LSC regulations should be consistent throughout the program. As such, SALA should provide staff training on the program's policies regarding 45 CFR § 1611.7(a) (reasonable income prospects) and 45 CFR § 1611.5 (exceptions to annual income ceiling).

³ SALA's policy provides that if an applicant meets the appropriate asset ceiling, or the asset ceiling is waived, and the applicant's or household income is above 125% of the FPG, the applicant is financially eligible for legal assistance if the Executive Director or designee has determined that the applicant should be considered financially eligible because of one (1) or more authorized expenses. *See* Eligibility Authorized Exceptions to the Annual Income Ceiling, at V-9.

Asset Eligibility

There appears to be confusion in the Bisbee office, as staff interviewed reported the maximum asset ceiling limit as being \$5,000, instead of the board-approved amount of \$10,000.

SALA's board-approved asset eligibility policy, adopted on March 18, 2010, provides that assets exempt from consideration during eligibility determinations are the applicant's or household's principal residence, vehicles used by the applicant or household members for transportation, assets used in producing income, and assets that are exempt from attachment under Arizona or Federal law, which are more specifically described in SALA's policies. SALA's policy contains a schedule detailing the individual assets exempt from attachment under Arizona law ("Schedule"). A comparison of SALA's board-approved asset policy and state law exemption Schedule with 45 CFR Part 1611 indicates that SALA's policies treat exempt assets inconsistently. The assets described as being exempt under the policy conflict with the assets described as being exempt under federal or state law pursuant to the Schedule. This conflict occurs because some of the assets listed as wholly exempt under the board policy are only partially exempt under the Schedule. For example, the board policy provides that the principal residence is wholly exempt from consideration during the asset determination; however, the Schedule excludes a maximum of \$150,000 equity in the principal residence under the Arizona Homestead Exemption. Similarly, the board policy provides that assets used in producing income are wholly exempt from consideration during the asset determination; however, the Schedule excludes only \$2,500 in tools and equipment of trade. Finally, SALA considers the receipt of Social Security Income, Veterans Benefits, Worker's Compensation, Unemployment Insurance, Cash Assistance, and General Assistance as income, but the Schedule lists them as exempt assets. Adding to the inconsistency is that SALA's Pre-Screen Intake Form and the ACMS do not include all of the assets listed as exempt in the Schedule. These varying exemption amounts, and the failure of SALA to include all exempt assets in their case management system, raise questions as to the amount SALA should be exempting and/or including during asset determinations.

Furthermore, intake screeners were not familiar with the asset exemptions contained in SALA's policy. Interviews revealed that most of the staff does not adequately screen the board-approved asset policy categories, as some staff do not ask certain questions at all while others ask about assets but are not aware of the specific exemption limit amounts. For example, some staff members excluded one (1) car rather than a car used for transportation; another staff member included the value of tools as income producing assets, which are wholly and partially excluded under SALA's asset policy; another intake screener did not know whether an IRA was an exempt or non-exempt asset. The lack of common understanding and consistency in the practice of including or excluding assets may lead to differing eligibility results for the same applicant depending on who conducts the eligibility screening. SALA should provide training to its staff to develop a consistent program-wide treatment of exempt and non-exempt assets.

Finally, several intake screeners could not articulate the assets excluded from attachment under state and federal law, as contained in the Schedule. Several intake screeners interviewed were not aware that pets, musical instruments, or wedding rings were assets that were either partially or wholly exempt under Arizona state law. During on-site intake observations and interviews,

several intake screeners included either the full value of a wedding ring or completely excluded the ring's total value, rather than excluding the partially exempt amount of \$1,000. In addition, several intake screeners wholly exempted the value of a hypothetical \$2,000 pet dog, rather than excluding the partially exempt amount of \$500. Also, several intake screeners could not define the type of asset that SALA considers a "library," even though a "library" is an asset partially exempt under SALA's policy. This lack of knowledge resulted in intake screeners including both wholly and partially exempt assets during the on-site intake observation of the financial eligibility process. Moreover, SALA's ACMS menu categories incorrectly describe the personal property exemption under Arizona state law as "Personal Property over \$4,000," when that exemption amount is described in its Schedule as "household furniture and appliances" pursuant to ARS § 33-112, which is only one (1) of the personal property exemption categories listed in SALA's exempt asset policies. As Arizona law does authorize a blanket exemption amount of \$4,000 for personal property, SALA cannot include a personal property exemption for this amount. SALA must record the total value of the non-excluded assets. The lack of knowledge concerning the types of assets exempt under state and federal law, and the incorrect personal property ACMS menu category, raises questions as to whether SALA is screening applicants consistent with their asset policy and 45 CFR Part 1611.

LSC requires recipients to screen applicants in accordance with its board-approved policy and if the policy includes the above-referenced asset categories, they must be the subject of inquiry and consideration in determining whether an applicant is eligible for assistance with LSC funds. Consistent asset screening under SALA's current asset policy is an issue for all offices assessed. LSC recommends that SALA address this issue either by requiring intake screeners to adhere to the current asset policy or by simplifying its asset policy to focus questioning on those categories of assets that are most likely to screen out households whose financial circumstances would allow them to hire a private attorney. LSC regulations do not require recipients to exempt all assets exempt from attachment under federal and state law, but it does require programs to screen consistently according to their board-approved asset policies. The implementation of LSC regulations should be consistent throughout the program. As such, SALA should review its ACMS and the applications in use to ensure that they are all compliant with both LSC regulations and its board approved policies.

Referrals from Pima County Older Americans

SALA's Tucson office receives referrals of intakes from Pima County Older Americans ("PCOA"). OCE did not assess, review, or observe the intake or referral process of this organization and thus cannot determine the integrity or reliability of this information. Intermediaries report that in some instances citizenship was screened by PCOA without SALA's independent verification. If SALA chooses to rely on the intake information provided by PCOA, SALA should ensure that PCOA's intake, citizenship, financial, and other eligibility processes are in compliance with LSC statutes, regulations, and applicable letters of instruction.

In response to the DR, SALA indicated that it verifies the citizenship of all applicants for services at SALA and does not rely on any third party to verify citizenship or financial status. According to SALA, PCOA completes a "Client Referral Form" prior to referring a case to SALA; however SALA contacts each applicant to conduct an eligibility intake. SALA stated

that the eligibility intake includes the screening of financial eligibility, citizenship verification, and a conflict check.

Overview of Intake Compliance Findings

SALA should remove any and all defaults in the ACMS essential category fields of total income, total assets, total expenses, and household composition, as required by CSR Handbook (2008 Ed.), § 3.6 and LSC Program Letter 02-6 (June 6, 2002). SALA should ensure that staff screen for income prospects and ensure that responses are recorded in the ACMS or case files, as well as in all outreach and in-person intake forms in use by SALA, as required by 45 CFR § 1611.7(a)(1). SALA should also provide staff training on the program's policies regarding 45 CFR § 1611.7(a) (reasonable income prospects) and 45 CFR § 1611.5 (exceptions to annual income ceiling). SALA should ensure that 45 CFR Part 1611 documentation is contained in all required cases. SALA should conduct a review of its current board adopted exempt and non-exempt assets policies related to its maximum annual asset ceiling and either ensure that all staff consistently adhere to these policies or adopt a new policy that reflects the actual screening practices of SALA. SALA should also remove incorrect asset categories from the Kemps assets menu. SALA should ensure that staff understands what policies are to be adhered to and that staff are trained concerning SALA's approved assets policies and the recordation of income and assets pursuant to 45 CFR § 1611.3 (d)(1) and CSR Handbook (2008 Ed.) §§ 5.3 and 5.4. Finally, SALA should make certain that PCOA's intake, citizenship, financial, and other eligibility processes are in compliance with LSC statutes, regulations, and applicable letters of instruction, as well as SALA's policies, if SALA chooses to rely on PCOA's intake eligibility screening.

In response to the DR, SALA offered no other individualized comments with respect to this finding.

Finding 3: SALA is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for applicants whose income does not exceed 125% of the Federal Poverty Guidelines. However, as noted in Finding 2, SALA's board-approved income policy is not being followed consistently.

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

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

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the 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 (2008 Ed.), § 5.3.

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

SALA is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for applicants whose income does not exceed 125% of the FPG. A few exceptions were noted in cases indicated as LSC funded and/or CSR reportable, where the documentation of eligibility lacked the specific facts and factors relied upon by SALA in making a financial eligibility determination. In all of the examples, the client's recorded income exceeded SALA's applicable annual income ceiling, but nothing in the file indicated that any expenses or authorized exceptions were used in determining that the client would be financially eligible for services. *See* open Case Nos. 08E-15106349 (the client's recorded annual income of \$34,794 exceeded 200% of the FPG), 10E-1130495 (the client's recorded income of \$2,473 per month for a household of two (2) exceeded SALA's applicable annual income ceiling), and 07-1087490 (a non-LSC funded case indicated as CSR reportable where the recorded income of \$1,711 per month for a household of two (2) exceeded SALA's applicable annual income ceiling); and closed 2010 Case Nos. 10E-1126530 (the intermediary reported that the client's recorded income of \$1,369.33 was 152% of the FPG, exceeding SALA's applicable annual income ceiling), 09E-9111401 (the client's recorded income of \$3,566 per month for a household of five (5) exceeded SALA's applicable annual income ceiling), and 10E-9120979 (the client's recorded income of \$2,200 per month for a household of one (1) exceeded SALA's applicable annual income ceiling).

Absent proper documentation of income eligibility, the legal assistance provided in the listed examples may not be charged to SALA's LSC funds and may not be included in SALA's CSR data submission. *See* CSR Handbook (2008 Ed.), § 5.3.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 4: SALA is in substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. However, as noted in Finding 2, SALA’s board-approved asset policy is confusing and is not being consistently applied.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁵ *See* CSR Handbook (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.

SALA is in substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4. However, a few exceptions were noted. *See*, for example, closed 2010 Case No. 09E-1117512 (the file contained no documentation of asset screening because the client’s household received the public benefit of SSDI. The intermediary reported that the “benefits exemption” was applied because of the receipt of SSDI. SSDI, however, is not a public benefits program that SALA’s board approved for categorical eligibility and, thus, asset screening was required. The board’s policy on assets provides that income and assets do not have to be independently screened if the applicant receives SSI, food stamps, GA, or TANF. *See* SALA Eligibility Guidelines, Paragraphs 3 and 5). *See also* closed 2010 Case No. 10E-1125023 (the file reflected that SALA included the total value of exempt and non-exempt assets in error. The file reflected that the client’s total savings were \$400, and SALA entered \$400 savings in the asset field; however, the board approved asset policy exempts \$150 savings and, thus, the value of the client’s non-exempt assets should have been recorded as \$250); open Case No. 11E-1133635 (a non-LSC funded case indicated as CSR reportable where the documented assets exceeded SALA’s asset ceiling, but the file lacked documentation of a waiver by SALA); and open Case No. 11E-1133378 and closed 2010 PAI Case No. 95-T04806 (both files lacking asset documentation). Additionally, while this is not a compliance error, it is noted that SALA routinely screens assets for applicants who are

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

categorically eligible. *See* closed 2010 Case Nos. 09E-2114952, 10E-2122070, and 10E-2129256 (assets were screened even though the applicant received TANF benefits and was categorically eligible); and closed 2010 Case Nos. 10E-1128576 and 10E-1126938.

Absent proper documentation of asset eligibility, the legal assistance provided to a client may not be charged to SALA's LSC fund and may not be included in SALA's CSR data submission. SALA should provide training to its staff concerning its asset policies and the recordation of assets pursuant to 45 CFR § 1611.3 (d)(1) and CSR Handbook (2008 Ed.) § 5.4.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 5: SALA is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Several exceptions were noted.

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

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

Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1626 as several exceptions were noted. Numerous cases lacked executed citizenship attestations. *See* open Case Nos. 11E-1133580, 10-E2128452, and 10E-1127735; closed 2011 Case No. 10E-15121877;⁷ and closed 2009 Case Nos. 08E-2101197, 07-1095552, 08E-15103132, 07-1087312, 09E-5118235,

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

⁷ SALA indicated that the case was marked for de-selection on 5/5/11.

and 09E-11118704. In addition, open Case Nos. 10E-2128897 and 09E-2111660 lacked evidence that approved alien eligibility documentation was provided to the program. Furthermore, it was difficult to discern the timeliness of the citizenship/alien eligibility documentation contained in some of the files reviewed because the files failed to list the date on which the citizenship attestation was executed or when the alien eligibility documentation was provided to SALA. *See* closed 2010 Case Nos. 10E-1122177 (undated citizenship attestation), 10E-2121826 (undated citizenship attestation), and 09E-2119499 (undated alien eligibility documentation); and closed 2009 Case No. 07-1086784 (undated citizenship attestation).

SALA must ensure that citizenship attestations and alien eligibility documentation is obtained as required by 45 CFR §§ 1626.6 and 1626.7. Absent the requisite Part 1626 documentation, these files should be excluded from SALA's CSR data submission to LSC and the time associated with them must not be charged to LSC funds.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 6: SALA is in substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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

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

Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9; however, exceptions were noted. Several case files lacked retainer agreements. *See* open Case Nos. 11E-1133580, 08E-15106349, 09E-7115388, 11E-7133399, 11E-7133772; closed 2010 Case Nos. 09E-15115719, 10E-15124076, 08-15100626, and 10E-3121045; and closed 2009 Case Nos. 06-1072790 and 07-1092986. In addition, several retainer agreements did not contain adequate scope and subject matter. *See*, for example, closed 2009 Case Nos. 09E-9113477, 09E-9113053, and 07-1086784; and closed 2011 Case No. 10E-7130788.

SALA should make certain that adequate retainer agreements are executed when representation commences, or as soon thereafter as is practical, in accordance with 45 CFR §§ 1611.9(a) and (c).

⁸ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

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

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

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

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 9: SALA is in non-compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Several exceptions were noted.

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

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

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

SALA is in non-compliance with CSR Handbook (2008 Ed.), § 5.6, as numerous exceptions were noted. Numerous files reviewed lacked evidence regarding what legal assistance was provided to the client. *See* open Case Nos. 07-1089907 and 11E-1131648; closed 2010 Case Nos. 10E-1122388, 10E-7129124, 10E-7128810, and 10E-1130423; closed 2009 Case Nos. 06-1072790, 09E-7115164, and 09E-1110395; and closed 2010 PAI Case No. 10E-1123753. Each of the open files had been closed at the time of the visit, but absent a description of the legal assistance provided to the client these files may not be reported to LSC.⁹ SALA is directed to designate these cases, and all cases closed in 2011 which lack evidence of what legal assistance was provided to the client, as not LSC reportable in their ACMS. The 2010 and 2009 closed files were reported to LSC in error.

There were also numerous sampled files closed with case closure category "A" (Counsel and Advice), that contained letters informing applicants that their case was not accepted for legal representation while at the same time providing them with legal advice. Closed 2010 Case Nos. 10E-2122070 and 10E-2126901 contained letters that stated "our office has limited resources and we cannot handle every case that comes to us. We also have guidelines set by our board which determine what cases we can and cannot accept. Based on these factors we do not handle this type of custody and visitation case. However, I can give you some advice on how you proceed on your own..." *See also*, closed 2010 Case Nos. 10E-2127796, 10E-2125375, 10E-2123358, 10E-2127864, and 10E-2123942. SALA must first accept an applicant for representation before giving that applicant legal advice. If SALA chooses to decline an applicant, then it should not proceed to provide legal advice to the declined applicant. *See* CSR Handbook (2008 Ed.) § 2.1(c) and CSR Frequently Asked Questions, Chapter II-Key Definitions, § 2.1, Question 1. SALA could easily remedy this issue by editing the advice letters to indicate that an applicant's case is accepted for the limited purpose of providing legal advice, but that SALA will not be providing extensive services. SALA should review each of its form letters to ensure that letters sent to clients are not both a rejection and an advice letter.

Additionally, there were several sampled files reviewed in which the assistance provided was legal information. *See* closed 2010 Case Nos. 10E-2124137 (notes in the file reflected that the client was only provided with form pamphlets, blank fee deferral forms, and instructions), 09E-2114046 (generic legal information concerning Arizona divorce law was provided to an

⁹At the time of the visit, SALA had already identified open Case Nos. 10E-1130914, 11E-1132426, and 11E-1133635 for exclusion from its CSR data submission to LSC.

individual who failed to appear for a VLP divorce clinic or contact VLP for services), 09E-2116192 (generic legal information concerning bankruptcy law was provided to an individual who failed to appear for VLP divorce clinic or contact VLP for services), 10E-1123291 (generic legal information concerning bankruptcy laws was provided to an individual), and 10E-2127907 (generic legal information concerning Arizona divorce law was provided to an individual who failed to appear for VLP divorce clinic or contact VLP for services). These sampled cases contained letters prepared for individuals who failed to attend the VLP workshops, whom the VLP could not contact, or for applicants provided with *pro se* forms. The provision of this type of information does not rise to the level of legal assistance as defined in § 2.2 of the CSR Handbook (2008 Ed.), but, rather, it is legal information, as defined in § 2.3 of the CSR Handbook (2008 Ed). *See also* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.6 on the Provision of Legal Information. It follows, therefore, that these files do not meet the definition of a case, as defined in § 2.1 of the CSR Handbook (2008 Ed.) or 45 CFR § 1635.2(a) and must not be reported in CSR submissions. These files do, however, meet the definition of a matter, as defined by 45 CFR §§ 1635.2(b) and 1620.2(b).

The provision of legal advice occurs whenever an attorney applies their legal judgment to the client's particular set of facts. *See* ABA Standards for the Provision of Civil Legal Aid, August 2006 and CSR Handbook (2008 Ed.). The ABA Standards for the Provision of Civil Legal Aid, § 3.6, provides a discussion concerning the difference between legal information and legal advice that is helpful. The ABA Standards note that:

“Legal *information* is aimed at helping the recipients of the information understand their rights and responsibilities and the appropriate procedures for redressing those rights and fulfilling those responsibilities. It is general in nature and not tailored to the unique facts of the individual's situation, although when legal information is offered to individuals, the provider may have enough knowledge about the person's situation to choose generally, what information is appropriate. Legal information is neutral and does not recommend a strategic course based on the judgment of the individual offering the information. Thus, the person offering the information might tell the recipient of options that are available in response to the legal problem, but would not suggest what option to take. Similarly, legal information might inform an individual of forms that are appropriate to use and the general information about what to include in a statement of facts or a request for relief. It should not suggest the specific facts to put on the forms. A provider could, for example, explain the different grounds for divorce and let the litigant choose the applicable one. *Legal advice* in contrast is specific to the unique circumstances of the inquirer. It is strategic in that it offers an approach that is tailored to the fact situation of the asker and goes beyond mere general advice appropriate for all persons who confront the same issue. The giving of legal advice is legal representation and creates an attorney-client relationship.” *See* ABA Standards for the Provision of Civil Legal Aid, § 3.6. *See also*, Standard 3.4-1 (on Representation Limited to Legal Advice).

The discussion of what constitutes the provision of “legal information” and what is “legal advice” is a very current and active issue in the United States legal community, and it is noted

that sometimes the distinctions between services that amount to legal advice and those that do not are not precisely clear. The line between legal advice and legal information can be very close and delicate. For example, telling someone the actual number of days left for him or her to appeal (i.e. doing the math calculation) would for LSC CSR purposes be legal advice. In contrast, just telling someone the overall number of days in an appeal period without any specific math calculation would be legal information only. Despite this, clear delineations and standards need to be established that provide the necessary separation between cases and “other services.”

Accordingly, SALA must ensure that the legal assistance provided is documented in the case file and that cases lacking documented legal assistance are not reported to LSC in the CSR data submission, in compliance with § 5.6 of the CSR Handbook (2008 Ed.). SALA must ensure that cases where only legal information is provided are not reported as cases in the CSR. *See* CSR Handbook (2008 Ed.), §§ 2.1, 2.2, and 2.3. *See also* 45 CFR §§ 1635.2 and 1620.2. SALA must review and reformat its form letters so that they are not both rejection and an advice letters and make certain that form letters contain legal advice consistent with the CSR Handbook (2008 Ed.), § 6.1 and the ABA Standards for the Provision of Civil Legal Aid, § 3.6 and Standard 3.4-1 (on Representation Limited to Legal Advice).

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 10: SALA’s application of the CSR case closure categories is inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). Several exceptions were noted.

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

Sampled cases evidenced that SALA's application of the CSR case closure categories is inconsistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). Several exceptions were noted. The main pattern of error found was with cases that utilized the case closure category “K” (Other) as a method for deselecting cases and, in some instances, as the case closure category when another case closure category would have been more appropriate. The CSR Handbook requires that cases be closed in the category that best reflects the level of service provided and if a descriptive closure category is applicable, then the “K” (Other) case closure category should not be used. *See* CSR Handbook (2008 Ed.), § 8.1 at FN 41.

Neither case closure category “K” nor any other of the case closure categories “A-L” may be used for any case except one that meets all the requirements for a CSR case to be reported to LSC (*See* Chapters II and V of the 2008 CSR Handbook). Accordingly, the use of case closure category “K” to denote a deselected case – or any other case in which legal assistance was not rendered to an eligible client – is a misuse of that case closure category. It is not permissible to use category letter “K” concurrently for the case closure category “Other” and for another purpose as this causes confusion and ambiguity in the Case Management System and the CSR records, nor is it acceptable to use any other category letter from “A-L” for the purpose of

denoting a rejected or de-selected case. While LSC did not explicitly discuss such use of LSC case closure category letters, the last sentence of Section 3.5 recommends a method for identifying and de-selecting cases that are not to be reported to LSC: “For example, one method is to close such case files with a closing code such as “X” (or any other letter near the end of the alphabet) that would be used to designate the case file as a non-CSR case.” The very reason that the phraseology “X” (or any other letter near the end of the alphabet) was used is to clearly separate such codes from the codes used to identify cases to be reported to LSC.

The following are a sample of cases identified during case review as having utilized case closure category “K” in error: *See* closed 2011 Case No. 10E-2125381 (the more appropriate case closure category would have been “B” (Limited Action) because the intermediary indicated that legal assistance rising to that level had occurred); closed 2010 Case Nos. 09E-15119146 (the more appropriate case closure category would have been “B” (Limited Action) because advice was given to the client regarding a custody hearing, including preparing the client for the hearing and reviewing court documents the client had drafted. The intermediary indicated that the case was closed with case closure category "K" on 1/24/11, because contact with the client had been lost. However, according to the case file and the ACMS, the case was opened on 10/27/09, and closed on 5/10/10, and it was, therefore, timely closed), 10E-1123284 and 10E-1126181 (these files should have been deselected because the intermediary reported that the client withdrew before legal services could be performed or the applicant was not accepted for representation), 10E-1124695 (the more appropriate case closure category would have been “A” (Counsel and Advice) because the file reflected that the client was given advice concerning a landlord-tenant matter), 10E-1120693 (the more appropriate case closure category would have been “F” (Negotiated Settlement without Litigation) because the file reflected that SALA negotiated a settlement to waive the client’s late fees in a landlord-tenant matter), and 10E-1122388 (the case should have been deselected because the file lacked evidence of legal assistance provided); closed 2009 Case Nos. 09E-2114699 (the case should have been deselected because no legal work was done due to contact being lost with the applicant after intake), 07-1095593 (this file should have been deselected because after the file was opened on 10/11/07, it was put on hold for 60 days because the advocate's case load was at capacity and then, over a year later, a series of "no contact" letters were sent to the client with the case eventually being closed, according to the advocate notes, due to lack of contact by the client. This file had become dormant after it was opened, was later untimely closed, and no legal work was ever done on behalf of the client), 07-1095552 (the case should have been deselected because no legal assistance was ever provided to this client. The case was opened on 10/10/07 and the advocate drafted a petition for custody on behalf of the client on 2/7/08, but the client lost contact with the program and the petition was never delivered to the client. In addition, as discussed *supra* in Finding 5, this file lacked an executed citizenship attestation), 06-1072790 (the case should have been deselected because it was opened 2/7/06, the last documented work occurred on 4/17/06, and the file was untimely closed on 12/31/09), 07-1092986 (the intermediary indicated that the “K” category was used because contact with the client had been lost, however there was evidence in the file of legal assistance having been given to the client and the case was timely closed and consequently this case could have been closed with the case closure category that most closely reflected the work that was done before contact with the client was lost), 09E-9113544 (a case that should have been deselected because it was a known duplicate case), and 07-1087312 (the case should have been deselected as it was untimely closed. The intermediary indicated that the last work done on

behalf of the client occurred on 3/16/07, but the file was not closed until 8/15/09. The notes also indicated that contact with the client had been lost. Were it not for the untimely closing, the case could have been closed using the case closure category that best reflected the work done before contact was lost with the client). *See also* closed 2010 Case Nos. 10E-3121043, 09E-3120218, 10E-1121243, 10E-7123700, 10E-9121946, 10E-7129124, and 10E-7128810; and closed 2009 Case Nos. 09E-1115928, 09E-1117964, 06-1082734, and 09E-11111801. These cases indicate that SALA should question its use of the “K” case closure category. LSC did not anticipate that this case closure category would be used frequently, as services most commonly provided to clients should fit more accurately within another case closure category.

Additionally, there were a several other cases where incorrect case closure categories were utilized. *See*, for example, closed 2011 Case No. 10E-2126681 (a case closed with case closure category "A" (Counsel and Advice) after it had fallen dormant because it was coded incorrectly. When SALA reached out to the applicant she indicated that she was already represented by an attorney. This case should have been deselected as there was no evidence of legal advice given and, in addition, it would have been improper to provide legal advice to a person who was already represented by counsel); closed 2010 Case Nos. 10E-1125045 (the case was closed with case closure category “B” (Limited Action), but the more appropriate category would have been “F” (Negotiated Settlement without Litigation) because the file reflected that SALA negotiated a DES hardship extension for AFDC benefits), 10E-1131125 (The case was closed with case closure category “B” (Limited Action), but the more appropriate category would have been “A” (Counsel and Advice) because the file reflected that SALA did not maintain a copy of the *pro se* pleadings it had prepared for the client), and 10E-1120761 (The case was closed using case closure category “L” (Extensive Services), but the more appropriate category would have been “I(a)” (Uncontested Court Decision) because the file reflected that the program obtained a court order of dismissal in favor of the defendant, SALA’s client).

SALA should ensure that files closed utilizing CSR case closure categories are cases where legal assistance was actually rendered, in accordance with CSR Handbook (2008 Ed.), § 8.1, and that the case closure categories used in closing these cases best reflects the level of assistance the program provided to the client so that each case is reported accurately to LSC in the CSR. *See* CSR Handbook (2008 Ed.), § 6.1, Chapters VIII and IX.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 11: SALA is in non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3, regarding the timely closing of cases. Several exceptions were noted.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).¹⁰ There is, however, an exception for limited service cases opened after September 30,

¹⁰ The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject

and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

Sampled cases evidenced non-compliance with the requirements of CSR Handbook (2008 Ed.), § 3.3, regarding the timely closing of cases as several exceptions were noted. Case review evidenced numerous files that were either untimely closed or dormant. All files cited lacked any notation or evidence in the case file or ACMS describing why the file should remain open, as required by CSR Handbook (2008 Ed.), § 3.3(a)(ii). *See* closed 2011 Case Nos. 10E-1121628 (the file was opened on 2/1/10 and contained a July 2010 entry that the client had been advised and no further assistance would be provided, but it was untimely closed on 1/31/11 as an “A” (Counsel and Advice) case) and 07-1092412 (the file was opened on 7/11/07 and closed 3/3/10 as a “B” (Limited Action) case, with no evidence of activity on the case for over two (2) years); closed 2010 Case Nos. 09E-15113065 (legal advice was given on the case open date of 4/9/09 with no further legal action taken, but the file was untimely closed on 1/11/10 as an “A” (Counsel and Advice) case), 07-1088427 (legal advice was given on 4/18/07 with no further legal action taken, but the case was untimely closed on 1/11/10 as an “A” (Counsel and Advice) case), 09E-1110926 (the last legal activity documented in the file occurred on 3/19/09, but the file was untimely closed on 5/21/10 as an “A” (Counsel and Advice) case), and 09E-3115522 (the file was opened on 6/29/09 and untimely closed on 4/12/10 as an “A” (Counsel and Advice) case); closed 2009 Case Nos. 07-1095593 (as indicated *supra* in Finding 10, this case sat dormant after it was opened on 10/11/07 and was eventually untimely closed on 8/15/09 as a “K” (Other) case), 07-1095552 (as indicated *supra* in Finding 10, Limited Service was provided to this client with all work ceasing on 2/7/08, but the case was untimely closed on 1/26/09 as a “K” case), 06-1072790 (as indicated *supra* in Finding 10, legal work ceased on the file on 4/17/06, but the case was untimely closed on 12/31/09 as a “K” (Other) case), 07-1096774 (legal advice was provided to the client on 4/7/08, but the case was untimely closed on 12/31/09 as an “A” (Counsel and Advice) case), 08-1099605 (legal advice was provided to the client on 2/1/08, but the case was untimely closed on 9/8/09 as an “A” (Counsel and Advice) case), 07-1087312 (as indicated *supra* in Finding 10, the last work done on behalf of the client occurred on 3/16/07, but the case was untimely closed on 8/15/09 as a “K” (Other) case), and 08E-3107152 (the file was opened on 9/8/08 with all activity ceasing in 2008, but it was untimely closed on 4/23/09 as an “A” (Counsel and Advice) case), 08-E-3101010 (the file was opened on 3/19/08 with all activity ceasing in 2008, but it was untimely closed on 11/12/09 as an “A” (Counsel and Advice) case); open PAI Case Nos. 99-T04554 (the file was opened on 10/8/99 and is dormant as it remained open at the time of the review although all legal activity ceased in 1999), 04-1054867 (the file was opened on 9/20/04 and is dormant as it remained open at the time of the review although all

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).

legal activity ceased in 2006), 09E-1119589 (the file was opened on 11/13/09 and is dormant as it remained open at the time of the review although all legal activity ceased in 2009), 00-T07477 (the file was opened on 7/6/00 and is dormant as it remained open at the time of the review although all legal activity ceased in 2000), and 09E-1114045 (this file was opened on 5/11/09 and is dormant as it remained open at the time of the review although all legal activity ceased in 2009); and closed 2010 PAI Case No. 05-1069503 (which was opened on 10/25/05 and untimely closed on 7/27/10).

SALA should ensure that cases closed are done so in a timely manner so that CSRs submitted to LSC contain current and accurate information, as required by CSR Handbook (2008 Ed.), § 3.3. SALA should confirm that open cases are not dormant by conducting a review with ongoing follow-up and oversight and it should deselect from any future CSR submission those cases identified in this report as being dormant or untimely closed.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 12: Sample cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. Two sets of duplicates were identified.

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

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

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

Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. Two (2) sets of duplicates were identified during the review of the sample files. *See* closed 2009 Case Nos. 09E-9113544 and 08E-15103132 (the original file was opened for the client under case number 08E-15103132, but the client delivered documents related to the case to a branch office which resulted in a second case being opened under case number 09E-9113544. SALA became aware of the duplication, but closed the second case number with case closure category "K" (Other) which resulted in both cases being reported to LSC in the CSR. The second file should have been deselected to avoid duplication) and closed 2010 Case Nos. 09E-5117010 and 10E-5126460 (the first file was closed on 1/5/10 due to

a lack of responsiveness from the client and the second was opened on 8/9/10 when the same client reestablished communication. Both files were opened under Legal Problem Code “01” (Bankruptcy/Debtor Relief) and related to the same debtor relief and bankruptcy issues. SALA should have reopened the first file when contact was reestablished in order to prevent duplication).

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 13: Review of the recipient’s policies, and the list of attorneys who have engaged in the outside practice of law, revealed that SALA 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 45 CFR Part 1604, 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.

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1604. OCE has reviewed the policy and has determined that it is consistent with Part 1604. Discussions with the Executive Director also confirmed that SALA is not involved in any unauthorized outside practice of law. Based on the review of the recipient’s policies, the list of attorneys who have engaged in the outside practice of law, and interviews with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1604.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

The limited review of accounting records and documentation for the period of 2009 through March 2011 and fiscal interviews with management and staff disclosed that SALA does not appear to have expended any grant funds or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b). Discussions with the Executive Director also confirmed that SALA is not involved in any prohibited political activities. Based on the review of accounting records and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1608.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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 (2) private attorneys; neither the referral service nor two (2) 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).

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1609. OCE has reviewed the policy and has determined that it is consistent with Part 1609. None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also confirmed that SALA is not involved in any fee-generating cases. Based on the review of case files and the recipient's policies, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1609.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 16: A review of SALA's accounting and financial records indicate compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

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

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).

Based on a limited review of the chart of accounts and detailed general ledger (“G/L”) for specific G/L accounts for 2009 through March 2011, observations of the physical locations of all offices by the LSC fiscal analyst and team members, and interviews with staff, SALA does not appear to be engaged in any restricted activity which would present a 45 CFR Part 1610 compliance issues. SALA does not have contracts with other organizations to provide personnel, accounting, information technology, or other support services that would require compliance with 45 CFR Part 1610. Letters sent to donors fully comply with the requirements of 45 CFR § 1610.5 notification, which requires that recipients provide donors with notification of the prohibitions and conditions which apply to the funds. Discussions with the Executive Director also confirmed that the program is not involved in any restricted activities and that its use of non-LSC funds, transfer of LSC funds, and its program integrity are not inconsistent with this regulation. Based on the limited review of the chart of accounts, G/L, and donor letters, along with interviews with staff and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1610.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 17: SALA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of the PAI case files were in substantial compliance with 45 CFR § 1614.3(d)(3).

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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

LSC's review of SALA's 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.

The review of PAI invoices disclosed that such invoices were itemized and detailed, and included support that the legal work was performed; 45 CFR § 1614.3(d) (3) requires that documentation must be included to support that the legal work was performed.

SALA PAI Model Assessment

In order to satisfy its requirements under 45 CFR Part 1614, SALA provides legal services to eligible clients through a pro bono model that serves residents in every county in its service area. The pro bono program, known as the Volunteer Lawyers Program ("VLP"), was originally launched in 1981. The VLP, which is housed in SALA's Tucson office and is operated by SALA staff members, covers 42,791 square miles in Arizona with an estimated 1,500 volunteer attorneys.

The VLP is staffed by five (5) full-time SALA employees; one (1) PAI Coordinator, who is an attorney and serves as the program director, one (1) Student Coordinator, who is an attorney, one (1) paralegal, and two (2) administrative assistants. As SALA's VLP and Basic Field Program maintain the same priorities, SALA's intake staff also screens applicants for eligibility and priority for referral to the VLP.

SALA intake attorneys or paralegals perform an intake screening interview and prepare a case file memo, using the ACMS to describe the case. If the case is deemed by intake staff to be eligible for representation, the case is then reviewed by the Intake Managing Attorney to determine whether the case should be referred to the VLP. Cases referred to the VLP do not typically receive services before the referral is made. After the PAI Coordinator has received a referral from the Intake Managing Attorney, she reviews the notes, determines if she needs to contact the client for additional information, and then begins to evaluate the list of volunteers to determine which volunteer attorney would be the most appropriate. The PAI Coordinator typically does not reject cases referred to the VLP by the Intake Managing Attorney, as all cases referred have gone through SALA's intake process and have been evaluated as appropriate referrals for the VLP. The VLP database allows the PAI Coordinator to search for volunteers by county and substantive area. The PAI Coordinator refers cases in Pima County, the larger urban

county within SALA's service area, and the Student Coordinator refers cases to the rural counties.

When a VLP attorney accepts a referral, letters are sent to both the VLP attorney and the client to confirm the referral. A telephone call is also placed to the client to inform them that the referral has been made. An Initial Disposition Form is completed by the VLP attorney after they have an opportunity to conduct an initial interview with the client. The Initial Disposition Form indicates to SALA when the client was interviewed and whether representation will be provided, whether the legal problem has been resolved, or if the client failed to keep their initial appointment.

The VLP has created a variety of clinics including advice only clinics for bankruptcy, domestic relations, employment law, and guardianship. All clients receive individual attention with their legal problem at the clinic and the cases are closed as "A" (Counsel and Advice).

Case status reviews are conducted on a quarterly basis. An interim status report is mailed to each VLP attorney in January, April, July, and October. SALA's VLP asks the VLP attorney to report on what work has been done to date, what work is expected in the future, and the estimated completion date. When the case has been completed, the VLP attorney forwards the documents and/or provides information for closing to SALA's PAI Coordinator who closes the case utilizing LSC case closure categories and completes a Final Disposition Form.

PAI Compliance Overview

SALA is in compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of the PAI case files was in substantial compliance with 45 CFR § 1614.3(d)(3). See discussed *supra* in Findings 4 and 5, one (1) PAI case lacking the required asset screening and one (1) PAI case that was over income, in violation of 45 CFR Part 1611; discussed *supra* in Finding 9, one (1) PAI case lacking a description of legal assistance provided, in violation of CSR Handbook (2008 Ed.), § 5.1; and discussed *supra* in Finding 11, five (5) dormant PAI cases and one (1) untimely closed PAI case.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

LSC 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.¹¹ Except that the definition does not include transfers related to

¹¹ 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

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 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

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

A limited review of accounting records and detailed general ledger for 2009 through February 2011, disclosed that all non-mandatory dues and fees are being paid with non-LSC funds. Based on this limited review, SALA appears to be in compliance with 45 CFR § 1627.4(a).

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

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

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.

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

A review of SALA advocate timekeeping records selected from SALA's offices for the pay periods ending on 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). SALA does not have on file the corresponding Quarterly Certification for Part-time Case Handlers, since such part-time case handlers do not work for organizations that engage in restricted activities in compliance with 45 CFR § 1635.3(d). Based on the limited review of the program's timekeeping records, SALA appears to be in compliance with 45 CFR Part 1635.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹² However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 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.

LSC further determined that it will not take enforcement action 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. As well, the regulatory provisions regarding 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. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

A limited review of SALA's fiscal records and the 2009 and 2010 Audited Financial Statements, and an interview with the CFO evidenced that there were no attorneys' fees awarded, collected, and retained for cases serviced directly by SALA that would violate 45 CFR Part 1642. SALA's

¹² The regulations defined "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).

policy manual included a written policy to guide its staff with the pre-December 2009 restriction on attorneys' fees. Discussions with the Executive Director revealed that SALA has amended its policy consistent with LSC Program Letter 10-1 (February 18, 2010) and that SALA's Board of Directors approved the amended policy during its May 20, 2010, meeting. OCE reviewed the new policy and has determined that it is consistent with Program Letter 10-1. Subsequent discussions with the Executive Director indicated that SALA's Chief Administrative Officer has been instructed to effect the replacement of the outdated policy in SALA's policy manual. Based on case files reviewed, the recipient's policies, discussions with the Executive Director, and the review conducted by LSC's fiscal analyst, SALA appears to be in compliance with the requirements of 45 CFR Part 1642.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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 45 CFR Part 1612 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.

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1612. OCE has reviewed the policy and has determined that it is consistent with Part 1612. SALA's written policy is provided to all new employees. None of the sampled fiscal files or documents reviewed evidenced any lobbying or other prohibited activities. Discussions with the Executive Director also confirmed that SALA is not involved in any prohibited public rulemaking or lobbying activities. Based on the policies reviewed, discussions with the Executive Director, and the fiscal review, SALA appears to be in compliance with the requirements of 45 CFR Part 1612.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the case files reviewed and discussions with the Executive Director, SALA appears to be in compliance with 45 CFR Parts 1613 and 1615.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹³

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1617. OCE has reviewed the policy and has determined that it is consistent with Part 1617. None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program’s policies, the case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1617.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1632. OCE has reviewed the policy and has determined that it is consistent with Part 1632. None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program’s policies, case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1632.

¹³ 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).

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity in compliance with the requirements of 45 CFR Part 1633.

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1633. OCE has reviewed the policy and has determined that it is consistent with Part 1633. None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1633.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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.

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1637. OCE has reviewed the policy and has determined that it is consistent with Part 1637. None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1637.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁴ This restriction has been contained in all subsequent appropriations acts. 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."

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1638. OCE has reviewed the policy and has determined that it is consistent with Part 1638. None of the sampled files reviewed, including documentation such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1638.

In response to the DR, SALA offered no individualized comments with respect to this finding.

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

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

SALA has adopted a written policy to guide its staff in complying with 45 CFR Part 1643. OCE has reviewed the policy and has determined that it is consistent with Part 1643. None of the sampled files reviewed indicated program involvement in such activity. Discussions with the Executive Director also confirmed that SALA is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, SALA appears to be in compliance with the requirements of 45 CFR Part 1643.

In response to the DR, SALA offered no individualized comments with respect to this finding.

¹⁴ *See* Section 504(a)(18).

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. Discussions with the Executive Director and other staff further evidenced and confirmed that SALA 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. Based on the case files reviewed and discussions with the Executive Director and other staff, SALA appears to be in compliance with the above LSC statutory prohibitions.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 30: SALA is in compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- a) Has read and is familiar with the priorities of the recipient;

- b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

SALA has adopted a written policy to guide its staff in complying with 45 CFR § 1620.6. OCE has reviewed the policy and has determined that it is consistent with Section 1620.6. A review of Section 1620.6 written agreements signed by nine (9) randomly selected SALA staff members who handle cases or matters, or who are authorized to make decisions about case acceptance, demonstrated that SALA obtains these agreements from necessary personnel. Based on the policies and signed written agreements reviewed, SALA appears to be in compliance with 45 CFR § 1620.6.

In response to the DR, SALA offered no individualized comments with respect to this finding.

Finding 31: A limited review of SALA’s internal control policies and procedures demonstrated that the program’s policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC’s Accounting Guide for LSC Recipients (2010 Ed), with one (1) exception.

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 Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (2010 Ed.), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process put in place, managed and maintained by the recipient’s board of directors and management which is designed to provide reasonable assurance of achieving the following objectives: (1) safeguarding of assets against unauthorized use or disposition; (2) reliability of financial information and reporting; and (3) compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed.).

Bank Reconciliations Review

The bank account reconciliations for the operating, client trust, and investments accounts - a total of four (4) bank accounts - were reviewed. All reconciliations were performed timely and accurately. However, there were several outstanding checks listed on the bank account

reconciliations that were over six (6) months old. Such old outstanding checks make it harder to review the bank reconciliations and should be resolved and removed from the outstanding check listings.

Accounting Manual Review

A cursory review of the Accounting Manual (Financial Procedures Manual) disclosed that it meets the requirements of the Accounting Guide for LSC Recipients (2010 Ed.).

Segregation of Duties and Internal Controls

A review of the internal controls worksheet, accounting records, and interviews with two (2) accounting staff disclosed that SALA has good segregation of duties, internal controls, and defined procedures through their Accounting Manual.

Company Credit Card Internal Controls

A review of the use of the company credit cards disclosed that the CFO, who approves the payment of the credit cards, requires that all purchases be for necessary and prudent business purposes and be supported by receipts.

Payroll Advance Procedures

It was disclosed through discussions with SALA's Executive Director and CFO, a review of SALA's Accounting Manual, and a review of SALA's General Ledger that payroll advances are prohibited by SALA and that none exist.

Travel Advance Procedures

It was disclosed through discussions with SALA's CFO, a review of SALA's Accounting Manual, and a review of SALA's General Ledger that travel advances are adequately controlled by SALA.

Fiscal Compliance Overview

A limited review of SALA's internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed.), with one (1) exception. SALA should ensure that outstanding checks equal to or greater than six (6) months old are investigated, resolved appropriately, if necessary, and removed from the outstanding check listings used in the bank account reconciliations.

In response to the DR, SALA offered no individualized comments with respect to this finding.

IV. RECOMMENDATIONS¹⁵

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

1. Make certain that the ACMS and procedures utilized will ensure that information necessary for the effective management of cases is accurately and timely recorded so that congruence is maintained between the information in the case files and the ACMS;
2. Make certain that sufficient retainer agreements are executed when representation commences or as soon thereafter as is practical. *See* 45 CFR §§ 1611.9(a) and (c);
3. Make certain that training is provided to staff on SALA's policies regarding 45 CFR § 1611.7(a) (reasonable income prospects), 45 CFR § 1611.5 (exceptions to annual income ceiling), 45 CFR § 1611.3 (d)(1) (approved asset policies), and CSR Handbook (2008 Ed.), §§ 5.3 and 5.4 (income and asset documentation); and
4. Make certain that open cases are not dormant by conducting a review of open cases, with ongoing follow-up and oversight.

¹⁵ Items appearing in the "Recommendations" section are not enforced by LSC and therefore the program is not required to take any of the actions or suggestions listed in this section. Recommendations are offered when useful suggestions or actions are identified that, in OCE's experience, could help the program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

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

V. REQUIRED CORRECTIVE ACTIONS

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

1. With regard to SALA's intake practice:

- a. Ensure that any and all defaults in the ACMS essential category fields of total income, total assets, total expenses, and household composition are removed as required by CSR Handbook (2008 Ed.), § 3.6 and LSC Program Letter 02-6 (June 6, 2002);
- b. Ensure that staff screen for income prospects and that responses are recorded in the ACMS or case files, as well as on all outreach and in-person intake forms used by SALA, as required by 45 CFR § 1611.7(a)(1);
- c. Ensure that a review is conducted of its current board-adopted exempt and non-exempt assets policies related to its maximum annual asset ceiling and either ensure that all staff consistently adhere to these policies or adopt a new policy that reflects the actual screening practices of SALA;
- d. Ensure that PCOA's intake, citizenship, financial, and other eligibility processes are in compliance with LSC statutes, regulations, and applicable letters of instruction if SALA chooses to rely on PCOA's intake eligibility screening;

In response to the DR, SALA indicated that it verifies the citizenship of all applicants for services at SALA and does not rely on any third party to verify citizenship or financial status. According to SALA, PCOA completes a "Client Referral Form" prior to referring a case to SALA; however SALA contacts each applicant to conduct an eligibility intake. SALA states that the eligibility intake includes the screening of financial eligibility, citizenship verification, and a conflict check.

- e. Ensure that staff comply with SALA's policies regarding 45 CFR § 1611.7(a) (reasonable income prospects), 45 CFR § 1611.5 (exceptions to annual income ceiling), 45 CFR § 1611.3 (d)(1) (approved asset policies), and CSR Handbook (2008 Ed.), §§ 5.3 and 5.4 (income and asset documentation);

In response to the DR, SALA offered no other individualized comments with respect to these Required Corrective Actions.

2. Ensure that a written citizenship attestation or alien eligibility documentation is obtained, when required, and that all documentation is dated to certify timeliness. *See* 45 CFR §§ 1626.6 and 1626.7;

In response to the DR, SALA offered no individualized comments with respect to this Required Corrective Action.

3. With regard to the description of legal assistance provided:

- a. Ensure that a description of the legal assistance provided is documented in each case file, that the description supports the case closure category used by SALA to close the case, and that cases lacking documented legal assistance are not reported to LSC in the CSR data submission, in compliance with §§ 5.6 and 8.2 of the CSR Handbook (2008 Ed.);
- b. Ensure that cases where only legal information is provided are not reported as cases to LSC in the CSR. *See* CSR Handbook (2008 Ed.), §§ 2.1, 2.2, and 2.3. *See also* 45 CFR §§ 1635.2 and 1620.2;
- c. Ensure it reviews and reformats its form letters so that that they are not both rejection and advice letters and make certain that all form letters contain legal advice consistent with CSR Handbook (2008 Ed.), § 6.1 and the ABA Standards for the Provision of Civil Legal Aid, § 3.6 and Standard 3.4-1 (on Representation Limited to Legal Advice);

In response to the DR, SALA offered no individualized comments with respect to this Required Corrective Action.

4. Ensure that files closed utilizing CSR case closure categories are cases where legal assistance was actually rendered, in accordance with CSR Handbook (2008 Ed.), § 8.1, and that the case closure categories used in closing these cases best reflects the level of assistance the program provided to the client so that each case is reported accurately to LSC in the CSR. *See* CSR Handbook (2008 Ed.), § 6.1, Chapters VIII and IX;

In response to the DR, SALA offered no individualized comments with respect to this Required Corrective Action.

5. Ensure that cases are closed in a timely manner so that CSRs submitted to LSC contain current and accurate information and it should deselect from any future CSR submission those cases identified as being untimely or dormant, as required by CSR Handbook (2008 Ed.), § 3.3; and

In response to the DR, SALA offered no individualized comments with respect to this Required Corrective Action.

6. Ensure that outstanding checks equal to or greater than six (6) months old are resolved and removed from the outstanding check listings used in the bank account reconciliations.

In response to the DR, SALA offered no individualized comments with respect to this Required Corrective Action.

In its comments to the DR, SALA indicated that it did not have any serious objections to the content of the DR and that it was in agreement with the Required Corrective Actions. SALA did not specifically address each individual Required Corrective Action, apart from Required Corrective Action 1(d); however, SALA stated that it is currently implementing the issued Required Corrective Actions with regard to its 2011 cases.

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Southern Arizona Legal Aid, Inc.

Justice. Opportunity. Hope.

September 29, 2011

(VIA EMAIL & US MAIL)

Lora M. Rath
Acting Director
Office of Compliance and Enforcement
Legal Services Corporation
333 K. Street NW 3rd Floor
Washington, DC 20007-3522

Re: LSC Office of Compliance and Enforcement Case Service Report/
Case Management System Review Draft Report
Southern Arizona Legal Aid, Inc. - Recipient No. 703050

Dear Ms. Rath:

This is in response to the LSC Office of Compliance and Enforcement (OCE) Case Service Report/Case Management System Review Draft Report received by SALA on August 15, 2011. On behalf of the SALA Board of Directors, Management Team and staff, we enjoyed having the LSC OCE team visit SALA. The feedback I received from SALA managers and staff were positive, informative and indicative of the professional approach by which your team conducted its evaluation.

My staff and I have reviewed the Draft Report. There are a few areas where there are factual inaccuracies and we offer the following corrections:

Finding 2, Page 12:

Referrals from Pima County Older Americans

Inaccurate Sentence: "Intermediaries report that in some instances citizenship was screened by PCOA without SALA's independent verification."

Administrative Office

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To: Lora M. Rath, Acting Director
From: Anthony L. Young, Executive Director

September 29, 2011
Page 2 Of 3

Correction: SALA verifies the citizenship of all applicants for service at SALA and does not reply on any third party to verify citizenship or financial status. SALA accepts referrals from PCOA using the attached document. Upon referral, SALA contacts the applicant to conduct an eligibility intake including financial eligibility, citizenship verification and conflict check. As you can see, the PCOA referral Form does not meet LSC's or SALA's requirements for financial or citizenship screening.

Finding 5, Page 16:

Inaccurate Sentence: "An additional case lacking an executed citizenship attestation was open 2011 Non-CSR Case No. 11E-5132868, where SALA was appointed Guardian ad Litem for an infant child unable to attest to citizenship."

Correction: A review of the file revealed that there was a Birth Certificate for the child. Attached is a copy of the Birth Certificate.

Finding 4, Page 15:

Inaccurate Sentence: Case No. 10E-1126530, "assets were screened even though the applicant received food stamps and was categorically eligible."

Correction: A review of the file revealed that SALA did check the categorically eligible box in SALA's Automated Case Management System (ACMS) and made notes concerning the client's assets in the ACMS, but did not screen for assets as part of the eligibility process.

Finding 9, Page 19:

Inaccurate Sentence: "Numerous files reviewed lacked evidence regarding what legal assistance was provided to the client. See open Case Nos. . . . 10E-1130914, 11E-1132426 and 11E-1133635. . ."

Correction: As to Case Nos. 10E-1130914, 11E-1132426 and 11E-1133635, these cases were reported to LSC when they were still open, but prior to LSC's visit these cases were closed as part of SALA's normal case closing process. They were closed as non-CSR events. Case No. 11E-1133635 was deselected for CSR reporting and closed with closure code 'X'. Case Nos. 10E-1130914 and 11E-1132426 were closed with closure code 'M' for Matter.

To: Lora M. Rath, Acting Director
From: Anthony L. Young, Executive Director

September 29, 2011
Page 3 Of 3

Finding 17, Page 30:

SALA PAI Model Assessment

Inaccurate Sentence: “ The VLP is staffed by seven (7) full-time SALA employees; . . .”

Correction: SALA’s VLP is staffed by five (5) full-time SALA employees; one (1) PAI Coordinator who is an attorney and serves as the program director, a student coordinator, who is an attorney, one (1) paralegal and two (2) administrative assistants.

Overall SALA’s management team is in agreement with the assessment, its findings and recommendations. SALA has already begun taking corrective action with respect to 2011 cases, and has initiated a process for implementing other recommendations. We look forward to working with your office on continuing to ensure compliance and improve the quality of services to SALA’s clients.

Sincerely,

SOUTHERN ARIZONA LEGAL AID, INC.



Anthony L. Young, Esq.
Executive Director

Enclosures

CATEGORY _____

PIMA COUNCIL ON AGING
CLIENT REFERRAL FOR LEGAL ASSISTANCE
SOUTHERN ARIZONA LEGAL AID, INC.

2343 E Broadway Blvd., Suite 200, Tucson, AZ 85719-6007 Phone: 623-9461 Fax: 884-5821

FOR PCOA OFFICE USE: WALK IN: PHONE: SALA:

CLIENT DATA: First Name: _____ Last: _____

D.O.B. ____/____/____ Age: ____ Sex: ____ SS#: ____-____-____

Spouse: _____ D.O.B. ____/____/____ SS#: ____-____-____

Address: _____

City: _____ State: _____ Zip: _____ Phone:

ETHNICITY: <input type="checkbox"/> Hispanic <input type="checkbox"/> Non Hispanic	RACE: (Circle One) White Black, Native American, Asian Hawaii/PI Other	LOW INCOME: Y N (1) 903 (2) 1,214
FRAIL/DISAB: Y N	LANG: _____	SOURCE(s):
NO. IN HOUSEHOLD: _____	LEGAL AZ RES: Y N	

The client is being referred for the following:

Referred by: _____ Date: _____ Date Faxed to SALA: _____

I, _____ authorize Southern Arizona Legal Aid Society, Inc. to provide the information requested below to the Pima Council on Aging concerning my legal assistance

CLIENT: _____
Signature Date

WITNESS: _____
Signature Date

FOR LEGAL AID OFFICE USE:

DATES: ACCEPTED _____ REJECTED _____ REFERRED _____

AGENCY REFERRED TO: _____

CASE TYPE CODE: _____ DATE CLOSED: _____

CASE CLOSURE CODE: _____ IF OTHER SPECIFY: _____

ADVOCATE ASSESSMENT CODE: _____ UNITS OF SERVICE: _____