



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Central California Legal Services
February 28-March 4, 2011
Case Service Report/Case Management System Review

Recipient No. 805060

I. EXECUTIVE SUMMARY

Finding 1: CCLS' automated case management system (ACMS) is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were inconsistencies noted with data entry regarding the date of intake recorded in the file and that which was recorded in the ACMS.

Finding 2: CCLS' intake procedures do not adequately support the program's compliance related requirements.

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

Finding 4: Sampled cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d) but non-compliance with the documentation requirements of CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4 due to the manner in which intake is conducted.

Finding 5: With two (2) exceptions sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Furthermore, CCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated citizenship attestations and/or no documentation as to when staff verified alien eligibility.

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

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

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

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

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

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

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

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

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

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

Finding 16: A limited review of CCLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 17: CCLS is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow up of the PAI cases. Additionally the review of CCLS' Private Attorney Involvement (PAI) fiscal activities concluded that CCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

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

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

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

Finding 31: A limited review of CCLS' internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition)) and LSC Program Letter 10-2.

II. BACKGROUND OF REVIEW

During the week of February 28 - March 4, 2011, staff of the Office of Compliance and Enforcement (OCE) conducted a Case Service Report/Case Management System (CSR/CMS) review at Central California Legal Services (CCLS). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of three (3) attorneys, one (1) management consultant, and one (1) fiscal analyst.

The on-site review was designed and executed to assess program compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, and to ensure that CCLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed CCLS for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1614 (Private attorney involvement);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 Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of CCLS' upper and middle management, staff attorneys, and support staff. CCLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2008 through December 31, 2010. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team selected 400 cases to review on site, which included some targeted files. All but 14 of the selected cases were reviewed. The files which were not reviewed

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.

were files that could not be located.³ The program had recently moved their main office and stated that some files had been misplaced during the move.

CCLS currently provides legal services to eligible clients in the following six counties in central California: Fresno, Kings, Mariposa, Merced, Tulare, and Tuolumne. CCLS provides client services at three (3) offices located in the county seats of Fresno, Merced, and Visalia. The administrative office of the program is in Fresno.

CCLS received grant awards from LSC in the amount of \$3,146,000 for 2008, \$3,372,925 for 2009, \$3,913,026 for 2010, and \$3,259,303 for 2011. In its 2010 submission to LSC, the program reported 5,973 closed cases. CCLS' 2010 self-inspection certification revealed a 5.1% error rate in CSR reporting.

By letter dated December 17, 2010, OCE requested that CCLS provide a list of all cases reported to LSC in its 2008 CSR data submission (closed 2008 cases), a list of all cases reported in its 2009 CSR data submission (closed 2009 cases), a list of all cases closed between January 1, 2010 and December 31, 2010 (closed 2010 cases), and a list of all cases which remained open as of December 31, 2010 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by CCLS staff and the other for cases handled through CCLS' PAI component. CCLS 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). CCLS was requested to notify OCE promptly, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the team would review during the on-site visit. The sample was developed proportionately among 2008, 2009, and 2010 closed and 2011 open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and CCLS agreement of January 4, 2011, CCLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.⁴

³ See Case No. 05E-1000261 closed in 2008; Case Nos. 10E-2002133, 09E-1003856, and 07E-1006324 closed in 2010; and Case Nos. 05-1000932, 09E-3002876, 00-1000615, 03E-1001690, 04-1000852, 05E-1000788, 05E-3000839, 04E-1001521, 08E-1001929, and 08E-3005492 on the open list.

⁴ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

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

At the conclusion of the visit, OCE conducted an exit conference during which CCLS was made aware of the areas in which a pattern of non-compliance was found. No significant distinctions, with the exception of execution of retainer agreements documented in Finding No.6, between 2008, 2009, and 2010 cases were found. OCE cited instances of non-compliance in the areas of intake, documentation requirements of CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4, and timely case closure. They were found in substantial compliance in the areas of 45 CFR Part 1611 (Financial eligibility), documentation requirements of CSR Handbook (2008 Ed.), § 5.5, documentation of legal advice, application of closing codes, automated case management system, and duplicate case reporting. CCLS was advised that they would receive a Draft Report that would include all of OCE's findings, and that they would have 30 days to submit written comments in response. Thereafter, a Final Report would be issued that would include CCLS' comments.

By letter dated May 18, 2011, OCE issued a Draft Report (DR) detailing its findings, recommendations, and required corrective actions. CCLS was asked to review the DR and provide written comments. On June 28, 2011, CCLS requested a two week extension for their response to the DR. By letter dated July 14, 2011, CCLS submitted its comments to the DR. Additional information was submitted on September 15, 2011. CCLS has taken several corrective measures in response to the DR, which have been detailed in their comments to the DR. Furthermore, CCLS requested that one (1) corrective action be amended. OCE has carefully considered CCLS' comments and has either accepted and incorporated them within the body of the report or responded accordingly. CCLS' comments, in their entirety, are attached to this Final Report.

III. FINDINGS

Finding 1: CCLS' automated case management system (ACMS) is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, there were inconsistencies noted with data entry regarding the date of intake recorded in the file and that which was recoded in the ACMS.

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

The automated case management system used by CCLS is Kemps Prime (Kemps). Attorneys, advocates and clerical staff are required to enter case notes into Kemps at or near the time the reported event, services or activities occur. Only designated intake staff members open or close case files and input or modify client data in the CSR portion of Kemps.

Several discrepancies, caused by human error, were identified during the case review. One pattern of data entry practices in Merced led to a discrepancy between the date closed as reflected in the file and the ACMS; this does not affect the sufficiency of the ACMS as it is attributable to a misunderstanding of program policy in one office. In Fresno and Visalia, intake staff who are responsible for closing cases on the ACMS utilize the date that the file was reviewed by an authorized reviewing attorney. In Merced, closing staff utilize the date that the advocate closed the case. Senior management stated that it is the program's policy that a case is not approved for closing until it is reviewed by an authorized reviewing attorney and therefore that date is the official closing date. Due to the different closing dates utilized by different intake workers almost all the closed cases reviewed in Merced, and Visalia contained closing dates that did not match the file. CCLS should ensure that ACMS case closing protocols are consistent in each of the program offices.

In response to the DR, CCLS stated that they conducted Kemps training at their all staff meeting on April 13, 2011, to review this issue. CCLS also stated that all intake workers, advocates and team leaders attended trainings presented by John Paul Kemp (the developer of CCLS' ACMS) on June 28-30, 2011.

Additionally, case review revealed that the most recent upgrade of the Prime ACMS includes Food Stamps/Checking/Savings in the asset source drop-down box. Files review revealed that in the Visalia office, food stamps are recorded as Food Stamps/Checking/Savings, while Merced and Fresno intake staff delete the checking and savings categories so that the food stamps stand alone. Both practices are incorrect. Food stamps should not be included in income or asset eligibility determinations as they are a non-cash benefit and cannot be used to hire an attorney. If CCLS wishes to capture this information during intake it should be recorded in case notes. CCLS must cease counting food stamps as assets.

In response to the DR, CCLS stated the following:

“During the course of the on-site visit intake workers were instructed not to include food stamps as income or assets. This was also reviewed at the all staff meeting on April 13 and again in the training presented by John Paul Kemp in late June. Since the visit CCLS has upgraded to Kemp Case Works Prime Version 12. We have eliminated food stamps are not included in either income or assets drop down boxes. [sic]”

Furthermore case review also indicated that some files are not always accurately coded in the ACMS to indicate whether intake was conducted in house or by phone. As such, some of CCLS' cases appear to be non-compliant with the documentation requirements of Part 1611 until the notes are reviewed to see that the intake was in fact conducted by phone. In order to more accurately record the manner of intake, CCLS should take out the default in its system to "in house" and require intake staff check the manner of intake for each intake screening they

conduct. *See e.g.*, Case No. 10E-2005820, ACMS indicated intake was "In House" where notes indicated intake was done by phone and citizenship was verified by phone but the file did not contain a citizenship attestation; and Case No. 10E-2005905, ACMS indicated intake was "In House" where notes indicated intake was done by phone and citizenship was verified by phone but the file did not contain a citizenship attestation.

CCLS should ensure that the correct case file information is entered and recorded in the automated case management system.

In response to the DR, CCLS stated that they will take this action.

CCLS must also ensure that the value of food stamps is not included in the total amount of assets reported.

In response to the DR, CCLS stated "we have done this".

Finding 2: CCLS' intake procedures do not adequately support the program's compliance related requirements.

CCLS' intake staff was interviewed regarding the implementation of CCLS intake procedures and LSC's requirements. The interviews comprised of inquiries regarding the program's intake screening process, and the staff's understands of the program's income and asset policies, and intake procedures. Copies of forms used during the screening and intake process were obtained. CCLS' case management system was also tested to ensure compliance with LSC's requirements.

The review of CCLS' intake system demonstrated that they have a uniform intake system in place with a slight variation between the branch offices. CCLS does not have a centralized intake system. The case management software, as previously mentioned in Finding No.1, is Kemps. Both walk-in and telephone intake are conducted at the program's branch offices. All walk-in applicants are interviewed for intake and the information is entered into the ACMS unless the applicant's legal problem is outside the program priorities, or the applicant's residence is outside the geographical area served by each branch offices.

Intake workers are required to indicate whether intake is conducted in-house or over the telephone in the ACMS. With the exceptions that are noted below, the intake process of the program covers and obtains the pertinent information with respect to the applicant's legal problem, if it is a conflict or duplicate case, income and assets eligibility, and citizenship or alien eligibility status.

Management interviews revealed that each team or unit leader performs an open case review of their advocates tri-annually. Case files are reviewed for timeliness and other litigation or compliance issues. An Opening and Closing Memorandum is prepared for all extended service cases. A compliance checklist is available for the attorneys to use at closing but is not mandatory.

The timeline for closing a case varies according to the level of assistance provided. If a case is closed as brief service, it should be submitted for review within the next 24 hours after the assistance is provided. For cases extended service cases, there is a period of 30 days after the legal assistance has completed for the advocate to close the case and submit it for review. All cases closed and submitted for review must be reviewed within the next 24 hours of submission. The managing attorneys interviewed indicated that they follow this practice however case review revealed that this is not the case. Timeliness issues are addressed in detail in Finding No. 11.

The Private Attorney Involvement (PAI) component of CCLS uses the same intake procedure as for basic field or staff cases. PAI activities, oversight and case review are discussed in Finding No.17.

The following are areas in which exceptions were noted during the review:

Conflict Checks

Intake interviews, mainly at the Fresno office, revealed that according to the reported sequence of the intake conducted, the income and asset eligibility information of the applicants were obtained before making the required conflict check, and it was not properly explained what happens with the information so obtained if there is a conflict that prevents case acceptance.

Income/Assets Screening

When the applicant's assets were not over the program's asset ceiling, most of the intake staff enter the assets as zero, and do not record the actual amount of the applicant's assets. Food Stamps benefits are also considered and entered as part of the applicant's assets, without any basis in the applicable federal regulation. In most offices the intake staff were not aware of the waiver exemption available when an applicant is over the assets ceiling and stated that in those situation the request for service has to be declined. Also most of the intake staff referred, in general, to the program amount of asset ceiling as \$5,000.00, none off the intake staff were fully aware of CCLS' actual asset ceilings. The program liquid assets ceiling are \$5,000 per individual-\$10,000 per household; and the non-liquid assets ceiling is \$15,000 per household.

In response to the DR, CCLS stated that they have conducted trainings to clarify this for the intake workers.

Income and Assets Screening

Intake staff does not make any inquiry regarding the applicants income or asset prospects during intake and as such is not in compliance with the requirements of 45 CFR § 1611.7(a)(10). Additionally, in domestic violence cases the intake workers are not aware of the financial eligibility screening exception allowed for in 45 CFR § 1611.3(e), and consequently count the income and assets of the alleged perpetrator during financial eligibility screening.

In response to the DR, CCLS stated that they have taken corrective action by instructing the intake staff on these matters. CCLS further stated that the ACMS now has a check-off box to help ensure compliance.

Government Benefits Exemptions

The Government Benefits Exemption as applied in the intake process of CCLS is not limited exclusively to those means tested government benefits that may be approved by the program Board. It is applied indistinctly to all governmental economical benefits that the applicant may receive. This may be due to the form in which the actual policy to that effect is worded which states “Any person currently receiving benefits under another means-tested program which has asset eligibility standards lower than the CCLS Board-adopted guidelines is presumptively asset eligible.” and fails to expressly identify or mention which programs are those as required by 45 CFR § 1611.4(c).

In response to the DR, CCLS stated that their Board of Directors revised this policy to specifically identify these programs.

Intake at Outreach Activities

CCLS has in use an intake form that is to be completed manually at some of the program outreach activities at which services are provided. That form, although useful for collecting certain critical intake information to determine client eligibility, does not require any information with respect to applicant’s assets. Furthermore, in most of those outreach activities, there is no direct or instant access to ACMS data system of the program, as such conflict or duplicate checks can not be made prior to service. Additionally, there is no system in place for over income exceptions to be processed and authorized at outreach clinics where the intake and service is provided on site.

In response to the DR, CCLS stated that they have modified their off-site intake procedures so as to ensure full client eligibility checking in one of three ways: “1. pre-screening and checking prior to the delivery of services at an off-site location; 2. remote access to the ACMS from the off-site location; 3. having applicants call in from the off-site location so that an intake worker can conduct the client eligibility check.”

CCLS must ensure that intake staff correctly notes the manner in which an applicant is screened (*e.g.*, in-house, by phone, etc.); that conflict checks are conducted prior to obtaining case specific facts or financial information from the applicant that may be confidential; ensure that the income or assets that a domestic violence victim may jointly receive or owns with its aggressor are not considered in the assessment of economic eligibility for services of said victim; that intake staff are aware of the program’s income and assets ceilings , the applicable exceptions when the applicant is over the income, and the assets waiver policy and limits; that as part of the income and assets eligibility screening, the applicant is always asked about prospective income and assets; that the intake conducted at outreach and legal clinics is appropriate to obtain all the required and necessary information to determine the eligibility of every applicant for service, including conflict and duplicate cases check , and that coming out from that scenario only

individualized legal assistance services can be reported as cases; and that intake staff receives and are continuously trained and instructed about the requirements of the CSR Handbook.

In response to the DR, CCLS stated that they have conducted trainings and implemented a plan for continuous training.

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

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant’s household and the total income before taxes received by all members of such household in order to determine an applicant’s eligibility to receive legal assistance.⁵ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

CCLS’ revised financial eligibility policy, adopted by its Board on September 7, 2005, sets CCLS’ annual income ceiling at 125% of the FPG for LSC-funded assistance. CCLS’ policy indicates that financial eligibility will be determined pursuant to the income guidelines most recently promulgated by LSC. Such guidelines are maintained in a document entitled Income

⁵ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

Eligibility Guidelines that lists eligibility levels by household size for 125% and 200% of the FPG, which is annually distributed to staff. To qualify applicants with income between 125% and 200% for LSC-funded assistance, intake staff are directed to complete a program-wide Eligibility Waiver form indicating the exception that applies to the applicant. *See* CCLS Case File Procedures Manual, Revised 12/12/09. The form must be submitted for consideration to designated management. A review of the form as it appeared in case files evidences that it lists the authorized exceptions identified in the board adopted policy and 45 CFR Part 1611. Review of case files revealed that CCLS receives funding from non-LSC funding sources which allow CCLS to provide legal assistance to clients whose income exceeds 125% of the FPG. If the client's income exceeds the income guidelines without exceptions, staff are instructed to leave the "CSR Reportable" field on page 3 of the ACMS unchecked when the case is closed.

CCLS is in substantial compliance with 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.) § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the poverty guidelines. A limited number of case files evidenced that services were provided to an over income client without the appropriate exception approval. *See e.g.* Case No. 10E-1000003, this case was opened and closed in 2010, documented income of \$4,300 per month for a family of seven (7). In 2010 the 125% monthly income limit for a household of seven was \$3,466. The income did not exceed the 200% limit. The case was funded by Area Agency on Aging, but it was coded as CSR-Reportable and no waiver was included in the file; Case No. 10E-1005211, the client's income in this case was over 125% of FPG but an income exception approval was not in the file; and Case No. 08E-1005925, the client in this case was over income but no authorized exceptions were noted to allow case acceptance.

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

In response to the DR, CCLS stated that this issue was addressed in the all staff meeting and the John Paul Kemp trainings.

Finding 4: Samples cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d) but non-compliance with the documentation requirements of CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4 due to the manner in which intake is conducted.

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.⁶ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

⁶ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

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

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

The Financial Eligibility guidelines approved by the CCLS Board of Directors on September 7, 2005, establishes the program's asset ceiling at \$15,000. Exempt from consideration is the applicant or household's principal residence, vehicles used by the applicant or household for transportation, assets used in producing income and other assets which are exempt under State or Federal law. The policy does not list the assets which are exempt under State or Federal law but provides two website addresses to obtain information on State law.⁷ It is recommended that CCLS specifically list in its policy the assets exempt from attachment that it wishes to exempt in asset eligibility determination, to ensure staff understand the parameters of the exemptions and apply them in a consistent manner.

In response to the DR, CCLS stated as follows:

"CCLS Board of Directors adopted an updated financial eligibility policy in May 2011 subsequent to the visit. As with the previous policy the new one provides, in part:

A listing of exempt assets is available at: www.courtinfo.ca.gov/forms/documents/ej155.pdf. A listing of the amounts of the exemption on assets is available at: www.courtinfo.ca.gov/forms/documents/exemptions.pdf Hard copies of the linked documents have been provided to all intake workers. In addition, these websites have been bookmarked in the web browser on each of the intake workers' computer work stations. Although the onsite review team members were unable to gain access to either of the web documents during the visit, we have rechecked the links and find them to be working at this time."

Sampled case files reviewed revealed that CCLS is in compliance with 45 CFR § 1611.6, revised 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2001 Ed.), ¶ 5.4, but not compliant with the requirements of CSR Handbook (2008 Ed.), § 5.4. All the files reviewed contained a notation in the asset field. However, almost all cases reviewed recorded a value of "0" for assets or a food stamp amount. Interviews with intake staff revealed that the intake staff documents clients'

⁷ We were unable to gain access to either site listed.

assets as "0" unless the client's assets are above the asset ceiling. The insufficiency of asset screening is discussed in detail in Finding No.2.

CCLS is in compliance with the asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d) but in non-compliance with the documentation requirements of, CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4 due to the manner in which intake is conducted.

In response to the DR, CCLS stated as follows: “Please see response to Finding No. 2 above. In addition, CCLS has conducted training in order to assure compliance with § 5.4 of the CSR handbook.”

CCLS must cease counting food stamps as assets, ensure that the value of food stamps is not included in the total amount of assets reported, and start recording the exact amount of assets for each client as required by CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

In response to the DR, CCLS stated “We have done this.”

Finding 5: With two (2) exceptions sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Furthermore, CCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated citizenship attestations and/or no documentation as to when staff verified alien eligibility.

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

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁸ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient’s CSR data

⁸ *See* Kennedy Amendment at 45 CFR § 1626.4.

submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

With two (2) exceptions sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). *See e.g.* Case No. 09E-3003495, this case was a non-LSC funded and non-reportable case with a missing attestation where the client was advised in person; and Case No. 09E-1006539, this case was also a non-LSC funded and non-reportable case without an attestation but where the advocate made several attempts to obtain one by mail.

Furthermore, CCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated citizenship attestations and/or no documentation as to when staff verified alien eligibility. The exceptions were present in all offices and in files from every year in the review period. *See e.g.* Case Nos. 09E-3003526, 09E-3001139, 09E-3006963, 09E-3000153, and 09E-3005629. All of these cases contained undated citizenship attestations.

The execution of citizenship attestations and verification of eligible alien status must be conducted during the application process, unless the case is an emergency. In the absence of dated attestations or the recordation of the date eligible alien documentation is reviewed, CCLS cannot demonstrate that these requirements were satisfied prior to case acceptance. Several of the files lacking a date of verification included statements in the case notes; however, the statements did not provide a date but stated, for example, "Client states she is an LPR." To effectively document the date the document is screened, comments can be as simple as a dated note stating "Copied client's LPR card." *See e.g.* Case Nos. 10E-1004062, 09E-1007053, 10E-1001466, 09E-1005566, 08E-3005245, 09E-2002961, 10E-1002635, 08E-1001932, and 08E-1003431.

CCLS must ensure compliance with the requirements of 45 CFR § 1626.6 and ensure that citizenship attestations are dated and that staff record the date that eligible alien documentation is reviewed. CCLS management advised the review team during the visit that intake staff have been instructed to copy the card and record the date it was copied in the ACMS case notes.

In response to the DR, CCLS stated the following:

"As noted in the draft report, during the time of the visit CCLS reminded intake workers of the need to date the verification of alien eligibility. This was likewise addressed in April 13 all staff meeting and the John Paul Kemp trainings."

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.⁹ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

CCLS is in substantial compliance with the requirements of 45 CFR § 1611.9. All but two sampled files contained a retainer agreement, when required. *See* Case Nos. 03-1003805, and 09E-1005524. These two (2) cases were opened in 2003 and 2009, respectively, and remain open.

Three (3) other retainers evidenced issues with the execution of the retainer; these were also older cases, two (2) opened in 2005 and one in 2008. One (1) retainer was executed four (4) years after representation commenced. *See* Case No. 05E-3004032- this case was opened on August 1, 2005 with a retainer agreement dated September 20, 2009, well after representation commenced. This was a heavily litigated case in which the program filed a cross-complaint in 2006. One retainer agreement lacked a date of execution. *See* Case No. 08E-3005245. One (1) case lacked a signature by the program advocate and a description of the legal problem for which representation is sought and the nature of the legal service to be provided. *See* Case No. 05E3001128.

Sampled cases from 2010 forward evidence compliance with the requirements of 45 CFR § 1611.9.

While no cases opened in 2010 evidenced issues with the execution of retainer agreement, CCLS should ensure that retainers are fully executed, when required.

In response to the DR, CCLS stated that they agree with this Finding. CCLS also stated that they have and will continue to ensure that retainers are executed, when required, in their twice monthly case closing sessions.

⁹ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient's risk management.

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

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

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

Case files reviewed indicated that CCLS is in compliance with the requirements of 45 CFR Part 1636.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

Prior to the visit, OCE was provided a list of CCLS' priorities. CCLS' most recent Statement of Priorities, dated March 18, 2004, lists program priorities as the Delivery of Legal Services; Maintaining, Enhancing and Protecting Income and Economic Stability; Preservation of Housing and Related Housing Needs; Improving Outcomes for Children and Youth; Safety, Stability and Well Being; and Protecting Civil Rights. None of the case sample files reviewed revealed legal issues that were outside of CCLS' priorities. As such CCLS is in compliance with 45 CFR Part 1620.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

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

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

CCLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. However a few cases did not include documentation of the legal assistance provided to the client. *See e.g.* Case No. 10E-1006076, case notes reveal that the applicant did not return opening case documents including the citizenship attestation and retainer agreement to the applicant. The paralegal contacted the applicant and discovered that the issue had been resolved. The file did not evidence the provision of advice, only legal information. This case was closed by the advocate on December 7, 2010 and had not been authorized for closing by the reviewing attorney. It is possible that the reviewing attorney would identify the lack of assistance and deselect the case, however, this was not recognized by the advocate; Case No. 10E-2006984, this case was opened December 6, 2010 and closed January 18, 2011. The applicant did not return opening case documents or show for an appointment. The paralegal was unable to make subsequent contact with the person. This case was incorrectly coded as CSR Reportable at the time it was closed.

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

In response to the DR, CCLS stated that they agree with this Finding. CCLS further stated that they utilize their case closing sessions to assure that the files contain a description of the legal assistance provided.

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

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

The files reviewed demonstrated that CCLS’ application of the CSR case closing categories are substantially consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). The case sample evidenced a few instances of incorrect application of closing codes but no pattern was found. *See e.g.* Case No. 09E-2002989, an education case in which the attorney filed a complaint with the United States Department of Education, Office of Civil Rights. Although the file evidenced extensive interaction with a third party, there was no hearing or other formal administrative process. This case was closed with an H, Administrative Agency Decision, though an L, Extensive Service, code is appropriate; Case No. 10E-1002810, was closed with an A, Counsel and Advice, though a B, Limited Action, is appropriate as there was documented third-party contact; and Case No. 08E-3003771, this case was closed as Ib, but the court decision was the approval of a negotiated settlement, so the correct closing code is G, Negotiated Settlement With Litigation.

Additionally, case review revealed that deselected files were closed with a K, Other, closure code. Management advised the review team that the ACMS requires the selection of a closure code for deselected cases, accordingly, the program uses K.¹⁰ The CSR Handbook (2008 Ed.) instructs recipients to use closure code K for closed cases that do not fit other CSR case closure categories. Two (2) files reviewed were not cases, as defined by the CSR Handbook (2008 Ed.), as both lacked legal advice, one because the client failed to show for an appointment and the other because it was a duplicate and mistakenly opened on the ACMS. *See* CSR Handbook (2008 Ed.), §§ 2.1, 6.1, 8.1, and 8.3. *See e.g.* Case Nos. 10E-1006771 and 10E-3006218.

It is recommended that CCLS add a non-CSR closure code to the ACMS Reason Closed drop-down box for use when cases are deselected. It is also recommended that CCLS conduct training on closure codes.

In response to the DR, CCLS stated that they have added a non-CSR closing code. CCLS further stated that “the need to insure the correct closing code was likewise addressed in the all staff meeting and the John Paul Kemp trainings. It has been further discussed by the closed case reviewers.”

¹⁰ The K code is not the program’s deselection method. To properly deselect a case from CSRs, closing staff must check the Deselect field (leaving the CSR Reportable field blank) and select a reason for which the case was deselected.

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

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, limited action, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, limited action, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).¹¹ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The CSR Handbook (2008 Ed.), § 3.3 requires programs to employ one or more methods of ensuring timely closing of cases. In this regard, the program has implemented triannual case review during which advocates meet with supervisors and review open cases to identify those which are ready for closure. While this would appear to be an effective system, the high number of dormant and untimely cases indicates that either the reviews are not occurring on a regular basis or the advocates are not taking action to close cases identified for closure. Further, cases discussed below reflect one or more notations of case review but with no follow-up action to close them. Additionally, although CCLS was correct to do so, at least 10 of the 30 non-reportable cases reviewed were deselected because of "untimely closure."

Case review demonstrated that CCLS is not in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as there were 10 files reviewed that were dormant or closed in an untimely manner. *See e.g.* Case No. 09E-1000591, this case was opened on January 29, 2009 and closed on June 7, 2010 with an A, Counsel and Advice, closure code though the advice was provided on January 29, 2009; Case No. 09E-1003182, this case was opened on May 29, 2009 and closed on April 5, 2010 with a B, Limited Action, though the file reflects preparation of a *pro per* answer to an Unlawful Detainer on June 1, 2009, and a closing letter on July 9, 2009; Case No. 08E-2006121, this case was opened on October 15, 2008 and closed on October 21, 2010 with an A, Counsel and Advice, though the advice was provided in October 2008; Open Case No. 03E-1000062, the last activity in this case was in 2004; and Open Case No. 08E-200568, the last communication with the client was

¹¹ The time limitation of the 2001 Handbook that a limited action case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed.), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR closure Category L (Extensive Service).

documented in October 2008 and file reviews in October 2010 and January 2011 were documented but the file did not contain any notes that indicated why it remained open.

Case review further revealed that some of the untimely closed cases became untimely because of a delay in the review by an authorized attorney. CCLS' case closing procedures require reviewing attorneys to review cases within 24 hours of submission by an advocate. *See* CCLS Case File Procedures Manual, Section 8.2.3. If followed, the closing procedure will not cause untimely case closure. It is recommended that CCLS take action to ensure program policy is followed to prevent the process from causing noncompliance.

Lastly, 10 open cases, nine (9) in the Fresno office, and one (1) in Merced, could not be located. It is likely that the Fresno office's move to new office space contributed its inability to locate the files. Nevertheless, of those, seven (7) were opened prior to 2008 and a review of ACMS case notes revealed that some, if not all, of these cases are dormant. *See e.g.* Case Nos. 05-1000932, 00-1000615, 03E-1001690, 04-1000852, 05E-1000788, 05E-3000839, and 04E-1001521.

It is recommended that CCLS review its case review procedures to determine and identify changes that would improve compliance with case closing procedures. It is also recommended that CCLS periodically generate case lists by office to ensure that open cases that are unassigned or assigned to advocates no longer at the program are captured, instead of only generating lists by current case handlers.

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

In response to the DR, CCLS stated the following:

“Since the visit CCLS has implemented protocols designed to assure timely closing of all cases. Aged, open cases are now reviewed by all team leaders on a more frequent basis to prevent cases from becoming dormant. In addition we have established that twice monthly, on the same dates and time in all three offices, all advocates will close all cases on which they have completed their work since the previous case closing date. In addition, we have likewise established twice monthly closed case reviews in which the reviewers in all three offices meet at the same time and date so as to prevent the creation of any bottlenecks in the closing review.”

CCLS further stated that:

“Team leaders have reviewed all open cases to identify dormant or inactive files to assure that they will be rejected and excluded from CSR submissions. Also, in our case twice monthly case closing sessions...we check for timely closing.”

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

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

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

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

CCLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The case sample included targeted files to test possible duplicate files. The case sample disclosed one set of duplicate files. Case No. 07E-1005419, is a duplicate to PAI Case No. 07E-1005204.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

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

In response to the DR, CCLS stated that they agree with this Finding.

Finding 14: Sampled cases and review of CCLS' accounting and financial records for the review period evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

OCE's review of CCLS' cash journal (vendor list) and check register of cash disbursements made for the review period along with discussion with program management did not reveal or indicate that the program expended grant funds or contributed personnel or equipment and resources in violation of 45 CFR §§1608.3(b) and 1608.4(b).

CCLS' cash disbursement records reviewed did not include any noticeable payments or contributions to a political party or association, the campaign of a candidate for public or party office or for use in advocating or opposing a ballot measure, initiative or referendum. Further, the executive director and the director of fiscal services both stated that neither CCLS nor its employees are involved in any political activities that are prohibited by LSC regulation(s) or make contributions of the program's grant funds or resources to support or promote political activities or interests.

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

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with 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 private attorneys; neither the referral service nor two private attorneys will consider the case without payment of a consultation fee; the client is seeking,

Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

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

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

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

Finding 16: A limited review of CCLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff indicated compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

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

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

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

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

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

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

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

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

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

OCE's review of the program's donor notification policies and procedures determined that CCLS properly notifies its non-LSC funding sources and individual donor, who contribute more than \$250, of the LSC prohibitions and conditions that apply to their funds and contributions as required by 45 CFR § 1610.5 – *Notification*. To ensure compliance, the Executive Director and grants administrator both indicated that non-LSC funding sources are made aware to this requirement during the grant solicitation process and donors are notified in CCLS' donor

acknowledgement and thank you letter. Several non-LSC grant documentation files and sample donor acknowledgement letter were examined. No exceptions were noted.

While on-site, CCLS provided OCE with its 2009 and 2010 program integrity certifications and the Executive Director's memorandums to the board of directors. The review found no exceptions with this documentation and overall compliance with 45 CFR § 1610.8 - *Program integrity of recipient*. Observation of CCLS' Fresno office location and the existence of separate personnel along with other separate factors found no inconsistencies with the requirement of this section of 45 CFR Part 1628. California Rural Legal Assistance (CRLA) is also located in the same office building as the main office in Fresno. CRLA was clearly marked as separate entities.¹² The Executive Director stated that they have no relations with CRLA that would raise 45 CFR § 1610.8 Program Integrity of Recipient issues.

Based on this limited review of the program's fiscal records, observations of the physical locations of all program field offices, and interviews with staff, CCLS does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

Finding 17: CCLS is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow up of the PAI cases. Additionally the review of CCLS' Private Attorney Involvement (PAI) fiscal activities concluded that CCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).

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

¹² Although there is signage which indicated California Rural Legal Aid Foundation (CRLAF) is located in the same building as the main office, that signage is old. CRLAF is no longer located in that building.

achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

The review of CCLS' PAI component indicates that the program only utilizes pro bono volunteer private attorneys for its PAI cases. Each unit decides which cases are appropriate to be referred to PAI. The PAI coordinator at the Fresno office is responsible for the referral and oversight of the majority of the program's PAI cases, except for the PAI cases at the Visalia office, which are referred to the Samaritan Center, according to a Memorandum of Understanding with that non profit organization. In the Visalia office, the person that is responsible for the oversight of the PAI files is an experienced paralegal. Every two (2) weeks she meets with the attorney and the paralegal that work at the Samaritan Center and reviews the open cases. The PAI coordinator at that office is an attorney, at the time of the visit she had been in that position for three (3) months, and as a result was not very familiar with all the PAI procedures. She is not involved in the oversight of the open cases. She only reviews the closed files, particularly the closing code, the retainer agreement, the closing letter, and the advice documentation in those files.

According to the PAI coordinator at the Fresno Office, a PAI client is informed within two (2) weeks if the case has been placed with a private attorney; both by phone call and a notice letter. Both the volunteer private attorney and the client are sent a package of documents consisting of the client rules and attorney rules applicable to each case. Subsequently, every two (2) weeks, the PAI coordinator effectuates a case follow-up, to assess its status. When a case is completed, the PAI coordinator selects the closing code, prepares the Closing Memorandum, and the case is sent to the managing attorney for case review and closed in the ACMS.

There are various legal clinics promoted by the PAI program, which are held with different frequency, for example: the Guardianship Clinic is held monthly; Veterans Clinic is held once a year; and Domestic Violence Clinic is held weekly. Staff participation at these clinics is limited to the organizational aspects of the activity.

PAI case review revealed proper oversight and follow-up of the cases. However, interviews and cases review revealed that cases reported from the Guardianship Clinic cases are legal information cases and not legal advice and as such can not be reported as A cases in the CSR. Interviews revealed that the Guardianship Clinic is conducted by private attorneys. The clinic is a three (3) hour session, which includes a video presentation, and after the presentation the private attorney explains to the group as a whole how the legal forms for that kind of legal action should be filled out. In the majority of the cases, only legal information is provided but there is no individualized legal advice, as required by the CSR Handbook (2008 Ed), § 2.1(d) and § 2.2. *See e.g.* Case Nos. 09E-1006616, 09E-1000997, 09E-1004016, 09E-1003989, 08E-1007424, and 09E-1000305.

Case review also revealed one (1) case file that that should have been two (2) different cases. Based on the information provided by the intermediary during case review it appeared as though the first case was a divorce case which ended in 2009 and the second case was a property law case which started in May of 2010. As such one should have been closed as a staff case in 2009 and a new PAI case should have been opened in May 2010, and closed in June 2010. *See* Case No. 07E-1006324- This case was opened on November 9, 2007 and CCLS staff worked

extensively on issues relating the client's divorce through 2008 and early 2009. No work is documented from early 2009 until May 19, 2010, when it was referred to a private attorney to handle a court appearance on an issue relating to the death of a client's joint tenant. The case was closed as a PAI case on June 30, 2010.

There are no corrective actions and or recommendations pertaining specifically to PAI cases.

Furthermore, LSC regulation 45 CFR Part 1614 requires that the recipient 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.

To meet LSC's PAI requirement, CCLS utilizes a pro-bono PAI model. PAI costs consist of CCLS' staff PAI time and allocated non-personnel costs based on allocation percentages derived from case handlers' PAI time to total case handlers time. CCLS requires its case handlers to document their PAI with the program's case management. While on-site CCLS provided copies of its PAI cost allocation worksheets for 2010 and 2009 and sample PAI time records

OCE's review of CCLS' PAI cost allocation worksheets, its written cost allocation methodology statement contained in the Accounting Manual, and CCLS' financial statement reporting of its PAI activity found that it utilizes a financial management system that fully complies with LSC's PAI accounting and financial reporting requirements. *See* 45 CFR Part 1614. Further, the cost allocation methodology is based on reasonable operating data and PAI time records are supported by staff PAI personnel charges and approved by program management.

The review noted no exceptions or inconsistencies in this area. For the review period, CCLS' PAI 12.5% expenditure requirements were \$424,981, \$393,596 and \$352,647 for 2010, 2009, and 2008, respectively. For 2010, as of the date of the review, the program projected that it will meet its PAI expenditure requirement. For 2009 and 2008, CCLS requested and LSC granted partial waivers of \$100,000 and \$30,500, respectively. These waivers reduced CCLS' 2009 PAI requirement to \$293,596 and 2008 PAI requirement to \$327,147. As reported in its audited financial statements for 2009 and 2008, CCLS met its adjusted PAI requirements by spending \$305,989 and \$348,609, respectively.

As a result of the fiscal review, no corrective action needs to be taken nor are recommendations for improvement suggested.

In response to the DR CCLS, stated that they agree with this Finding. The additional comments that were submitted in response to this Finding related more appropriately to Finding No.16 and as such have been incorporated in that section.

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

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.¹³ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000.00 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2).

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

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

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

To track and account for the program's grant support, revenues, expenses and fund balances/net assets by funding sources, CCLS uses an off-the-shelf "MIP" accounting software. Also, the software produces a cumulative, detailed general ledger and other accounting records and financial reports. To ensure the proper accounting and reporting of financial transactions of the program, the fiscal director oversees the accounting system and records that is generated and maintained by CCLS' three (3) other fiscal accounting staff with final oversight and approval by the Executive Director.

¹³ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

The program uses the timekeeping component of its case management system, Kemps, to comply with LSC timekeeping regulation and support its cost allocation of indirect, joint costs. With regard to cost allocation, CCLS' methodology is outlined in its Accounting Manual. OCE's review of the accounting records provided determined that CCLS' accounting system adequately records and reports the program's grant activities and conforms to LSC accounting and financial reporting requirements.

OCE's review of CCLS' cash journals and discussions with program management found compliance with 45 CFR § 1627.4(a) - Membership fees or dues. The LSC grant fund was charged with payments to the State Bar of California and other membership fees, such as payments to NLADA were for insurance and other allowable expenditures. The membership fees for NLADA were paid with non-LSC funds.

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

As a result of the above review, no corrective action needs to be taken nor are recommendations for improvement suggested.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

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

The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted

activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

CCLS uses Kemps case management system and utilizes its timekeeping component to record time spent by attorneys and paralegals. The program requires its case handlers to document within Kemps the amount of time spent on each case, matter, or supporting activity. CCLS' time records are 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.

While on-site, the program provided a sample of its time records for several payroll periods. OCE's review of CCLS' time records found that the records contain the required information, accounts for all of the case handler's time and complies with time requirements of 45 CFR Part 1635.

OCE's review of CCLS' timekeeping policies and procedures and a sample of completed time records for case handlers along with discussion with the executive director and the administrator disclosed that time records are kept electronically and contemporaneously and time spent on cases, matters or supporting activities complies with 45 CFR §§ 1635.3(b) and (c). OCE's review noted no exceptions or inconsistencies in CCLS' timekeeping policies and procedures and time records.

With regard to part-time case handlers, the Executive Director, the Director of Fiscal Services and the Director of Human Resources indicated that CCLS does not employ any case handlers on a part-time basis. Per the sample time records, all case handlers' daily time recorded equal or exceeded 7.5 hours per day.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.¹⁴ However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Thereafter, at its January 23, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees

¹⁴ The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

for work performed, regardless of when such work was performed. Enforcement action will not be taken against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. *See* LSC Program Letter 10-1 (February 18, 2010).¹⁵

The sampled files reviewed did not contain a prayer for attorney fees prior to December 16, 2009, as such CCLS is in compliance with the requirements of 45 CFR Part 1642. Additionally, a limited review of the CCLS fiscal records, and interviews with management evidenced that the CCLS was compliant with the requirements of 45 CFR Part 1642 (Attorneys' fees).

There are no recommendations or corrective actions required.

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

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

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with 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

¹⁵ Recipients are reminded that the regulatory provisions regarding fee-generating cases, accounting for and use of attorneys' fees, and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action.

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, and review of the recipient’s policies, also confirmed that CCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations define “initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁶

None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director, and review of the recipient’s policies, also confirmed that CCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

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

¹⁶ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with 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, and review of the recipient's policies, also confirmed that CCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with 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.

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, and review of the recipient's policies, also confirmed that CCLS is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with 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 restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁷ This restriction has been contained in all subsequent appropriations acts.¹⁸ This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

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

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

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

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

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

¹⁷ *See* Section 504(a)(18).

¹⁸ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

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

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted, and review of the recipient's policies, further evidenced and confirmed that CCLS was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

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

The review team requested a copy of the signed written agreements in accordance with this requirement during the visit. The Executive Director provided copies of signed statements by the staff in accordance with the requirements of 45 CFR § 1620.6.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

Finding 31: A limited review of CCLS' internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition)) and LSC Program Letter 10-2.

In accepting LSC funds, recipients agree to administer these funds in accordance with requirements of the Legal Services Corporation Act of 1974 as amended (Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the LSC, including, but not limited to, LSC Audit Guide for Recipients and Auditors, Accounting Guide For LSC Recipients (1997 & 2010 Edition), the CSR Handbook, the LSC Property Acquisition and Management Manual, and any amendments to the foregoing. Applicants agree to comply with both substantive and procedural requirements, including recordkeeping and reporting requirements.

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process effected by an entity's governing body, management and other personnel, designed to provide reasonable assurances regarding the achievement of objectives in the following categories: (1) Effectiveness and efficiency of operations; (2) Reliability of financial reporting; and (3) Compliance with applicable laws and regulations. *See* Chapter 3 of the Accounting Guide for LSC Recipients (August 1997).

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

OCE's review of CCLS' accounting policies and procedures manual, accounting records and discussions with program management found that the program has established an adequate

internal control structure which includes adequate accounting records, competent personnel, defined duties and responsibilities, segregation of duties, independent checks and proofs and a written Accounting Manual, which was being revised and updated. Further, CCLS' auditor's reports on internal controls for the review period did not identify any deficiencies in the internal controls that could be considered to be material weaknesses.

While on-site, the program provided sample copies of its cash disbursement supporting documentation and monthly bank reconciliations for its general operating accounts. The documentation illustrated that cash disbursements are reviewed and approval initialed prior to payment and cash/bank accounts are reconciled monthly by a accounting staff and reviewed and approved by the Executive Director and Director of Fiscal Services.

Also, CCLS' internal controls policies and procedures are outlined in the program's Accounting Manual. While on-site, using LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (FCR) checklist, OCE interviewed and discussed the program's internal control and accounting policies and procedures which are currently being followed. To corroborate the information obtained, CCLS completed LSC's internal control worksheet which also identifies the duties and responsibilities of accounting staff.

The results of the FCR checklist inquiries and a review of the above noted documents indicate adequate segregation of duties in that a transaction cannot be completed without some else's knowledge and/or approval. OCE's review found that the program's internal control and accounting procedures as outlined its Accounting Manual appear to be adhered to and followed by the program in that there was evidence of managerial review and approval.

There are no recommendations or corrective actions required.

In response to the DR, CCLS stated that they agree with this Finding.

IV. RECOMMENDATIONS¹⁹

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

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

In response to the DR, CCLS stated as follows:

“Team leaders have reviewed all open cases to identify dormant or inactive files to assure that they will be rejected and excluded from CSR submissions. Also, in our case twice monthly case closing sessions...we check for timely closing.”

2. Review files for compliance with the requirements of 45 CFR § 1611.9(a) (Retainer agreement); and

In response to the DR, CCLS stated that they have done and will continue to do this in their twice monthly case closing sessions.

3. List in its policy the assets exempt from attachment that it wishes to exempt during asset eligibility determinations.

In response to the DR, CCLS stated as follows:

“CCLS Board of Directors adopted an updated financial eligibility policy in May 2011 subsequent to the visit. As with the previous policy the new one provides, in part:

A listing of exempt assets is available at:

www.courtinfo.ca.gov/forms/documents/ej155.pdf . A listing of the amounts of the exemption on assets is available at:

www.courtinfo.ca.gov/forms/documents/exemptions.pdf . Hard copies of the linked documents have been provided to all intake workers. In addition, these websites have been bookmarked in the web browser on each of the intake workers’ computer work stations. Although the onsite review team members were unable to gain access to either of the web documents during the visit, we have rechecked the links and find them to be working at this time.”

¹⁹ 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, CCLS is required to take the following corrective actions:

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

In response to the DR, CCLS stated that they will take this action.

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

In response to the DR, CCLS stated the following:

“Since the visit CCLS has implemented protocols designed to assure timely closing of all cases. Aged, open cases are now reviewed by all team leaders on a more frequent basis to prevent cases from becoming dormant. In addition we have established that twice monthly, on the same dates and time in all three offices, all advocates will close all cases on which they have completed their work since the previous case closing date. In addition, we have likewise established twice monthly closed case reviews in which the reviewers in all three offices meet at the same time and date so as to prevent the creation of any bottlenecks in the closing review.”

3. Provide mandatory training for the full staff regarding the requirements of the financial eligibility policy including but not limited to the program’s income and assets ceilings , the applicable exceptions when the applicant is over the income, and the assets waiver policy and limits, prospective income screening; and the requirements of the CSR Handbook;

In response to the DR, CCLS stated that they have conducted trainings and implemented a plan for continuous training.

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

In response to the DR, CCLS stated that this issue was addressed in the all staff meeting and the John Paul Kemp trainings.

5. Cease counting food stamps as assets, ensure that the value of food stamps is not included in the total amount of assets reported, and start recording the exact amount of assets for each client as required by CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4;

In response to the DR, CCLS stated the following:

“During the course of the on-site visit intake workers were instructed not to include food stamps as income or assets. This was also reviewed at the all staff meeting on April 13 and again in the training presented by John Paul Kemp in late June. Since the visit CCLS has upgraded to Kemp Case Works Prime Version 12. We have eliminated food stamps are not included in either income or assets drop down boxes. [sic]”

6. Ensure intake staff and advocates require United States citizen applicants date their citizenship attestations and sign such attestations before they are accepted as clients when required to do so in accordance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens) and CSR Handbook (2008 Ed.), § 5.5. And document the date on which the intake staff or advocate verified the immigration status of eligible non-citizens;

In response to the DR, CCLS stated the following:

“As noted in the draft report, during the time of the visit CCLS reminded intake workers of the need to date the verification of alien eligibility. This was likewise addressed in April 13 all staff meeting and the John Paul Kemp trainings.”

7. Ensure that each case reported to LSC contains a description of the legal assistance provided to the client;

In response to the DR, CCLS stated that they utilize their case closing sessions to assure that the files contain a description of the legal assistance provided.

8. Ensure that intake staff correctly notes the manner in which an applicant is screened (*e.g.*, in-house, by phone, etc.);

In response to the DR, CCLS stated that they have conducted trainings and implemented a plan for continuous training.

9. Ensure that conflict checks are conducted prior to obtaining case specific facts or financial information from the applicant that may be confidential;

In response to the DR, CCLS stated that they have conducted trainings and implemented a plan for continuous training since OCE’s on-site visit.

10. Ensure that the intake conducted at outreach and legal clinics is appropriate to obtain all the required and necessary information to determine the eligibility of every applicant for service, including conflict and duplicate cases check; and

In response to the DR, CCLS stated that they have modified their off-site intake procedures so as to ensure full client eligibility checking in one of three ways: “1. pre-screening and checking prior to the delivery of services at an off-site location; 2. remote access to the ACMS from the off-site location; 3. having applicants call in from the off-site location so that an intake worker can conduct the client eligibility check.”

11. Add a non-CSR closure code to the ACMS Reason Closed drop-down box for use when cases are deselected. It is also recommended that CCLS conduct training on closure codes.

In response to the DR, CCLS stated that they have added a non-CSR closing code. CCLS further stated that “the need to insure the correct closing code was likewise addressed in the all staff meeting and the John Paul Kemp trainings. It has been further discussed by the closed case reviewers.”



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July 15, 2011

Lora Rath
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

Re: CSR/CSM Visit, Recipient No. 805060

Dear Ms. Rath,

Enclosed is the Central California Legal Services, Inc. response to the Draft Report for the on-site Case Service Report/Case Management Systems review of Central California Legal Services which took place on February 28-March 4, 2011. An electronic copy was transmitted yesterday by email.

I thank your and the staff of the Office of Compliance Enforcement for working with us to make this process proceed as smoothly as possible.

Sincerely,

Chris A. Schneider
Executive Director



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**CCLS RESPONSE TO DRAFT REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

Central California Legal Services
February 28-March 4, 2011
Case Service Report/Case Management System Review

Recipient No. 805060

Submitted: July 14, 2011



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Central California Legal Services, Inc. (CCLS) hereby responds to the above referenced draft report. We thank the Office of Compliance and enforcement for its cooperation in extending the deadline for us to respond due to the delay caused initial delivery of the report to our old address and other calendaring conflicts.

We were pleased that of the 31 findings, 25 indicate that we are in compliance and 4 indicate that we are in substantial compliance. Obviously we are disappointed that there were any findings of non-compliance. We believe the report, and the actions which CCLS has taken in response helps us improve the delivery of services to our client community.

Below we incorporate the Executive Summary and related excerpts from the draft report and insert our response in blue. We are in substantial agreement with the findings, corrective actions and suggestions. As indicated below CCLS has taken appropriate steps to assure even greater compliance with LSC regulations and the CSR Handbook¹ and believe that these actions will fully satisfy the Required Corrective Actions as well as the Recommendations.

Finding 1: CCLS' automated case management system (ACMS) is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However there were inconsistencies noted with data entry regarding the date of intake recorded in the file and that which was recoded in the ACMS.

Due to the different closing dates utilized by different intake workers almost all the closed cases reviewed in Merced, and Visalia contained closing dates that did not match the file. CCLS should ensure that ACMS case closing protocols are consistent in each of the program offices. Response: CCLS conducted at Kemps training at its all staff meeting on April 13 to review this issue. In addition, CCLS had all intake workers, advocates and team leaders attend trainings presented by John Paul Kemp (the developer of our ACMS) on June 28-30.

Additionally, case review revealed that the most recent upgrade of the Prime ACMS includes Food Stamps/Checking/Savings in the asset source drop-down box. Files review revealed that in the Visalia office, food stamps are recorded as Food Stamps/Checking/Savings, while Merced and Fresno intake staff delete the checking and savings categories so that the food stamps stand alone. Both practices are incorrect. Food stamps should not be included in income or asset eligibility determinations as they are a non-cash benefit and cannot be used to hire an attorney. If CCLS wishes to capture this information during intake it should be recorded in case notes. CCLS must cease counting food stamps as assets. Response: During the course of the on site visit intake workers were instructed not to include food stamps as income or assets. This was also reviewed at the all staff meeting on April 13 and again in the training presented by John Paul Kemp in late June. Since the visit CCLS has upgraded to Kemp Case Works Prime Version 12. We have eliminated food stamps are not included in either income or assets drop down boxes. We note, however, that we believe that the removal of food stamps from the drop down boxes should be a recommendation rather than a corrective action. While food stamps are not considered by LSC to be either income or

¹ We note that on page 5 the draft report indicates that CCLS received LSC funding in the amount of "\$33,399,846" for 2010. The correct amount of LSC funding for 2010 is \$3,399,846.

assets, there may be some other funders who, for whatever reason, may classify them as such. CCLS must, of course, assure that for CSR reportable cases, food stamps are not included as income or assets. However CCLS should not be directed to modify its ACMS software in a manner that may be inconsistent with future funders. We request that this corrective action be changed to a recommendation.

In order to more accurately record the manner of intake, CCLS should take out the default in its system to "in house" and require intake staff check the manner of intake for each intake screening they conduct. CCLS response: CCLS will take this action.

CCLS should ensure that the correct case file information is entered and recorded in the automated case management system. CCLS must also ensure that food stamps are removed from the assets field. CCLS Response: Done. Please see response to 2 above.

Finding 2: CCLS' intake procedures do not adequately support the program's compliance related requirements.

Also most of the intake staff referred, in general, to the program amount of asset ceiling as \$5,000.00, none off the intake staff were fully aware of CCLS' actual asset ceilings. CCLS Response: CCLS has conducted trainings to clarify this for the intake workers.

Intake staff does not make any inquiry regarding the applicants income or asset prospects during intake and as such is not in compliance with the requirements of 45 CFR § 1611.7(a)(10). Additionally, in domestic violence cases the intake workers are not aware of the financial eligibility screening exception allowed for in 45 CFR § 1611.3(e), and consequently count the income and assets of the alleged perpetrator during financial eligibility screening. CCLS Response: CCLS has taken corrective action by instruction to intake staff on these matters. The ACMS now has a check off box to help assure compliance.

The Government Benefits Exemption as applied in the intake process of CCLS is not limited exclusively to those means tested government benefits that may be approved by the program Board. It is applied indistinctly to all governmental economical benefits that the applicant may receive. This may be due to the form in which the actual policy to that effect is worded which states "Any person currently receiving benefits under another means-tested program which has asset eligibility standards lower than the CCLS Board-adopted guidelines is presumptively asset eligible." and fails to expressly identify or mention which programs are those as required by 45 CFR § 1611.4(c). CCLS response: The CCLS Board of Directors revised the policy to specifically expressly identify these programs.

CCLS has in use an intake form that is to be completed manually at some of the program outreach activities at which services are provided. That form, although useful for collecting certain critical intake information to determine client eligibility, does not require any information with respect to applicant's assets. Furthermore, in most of those outreach activities, there is no direct or instant access to ACMS data system of the program, as such conflict or duplicate checks can not be made prior to service. Additionally, there is no system in place for over

income exceptions to be processed and authorized at outreach clinics where the intake and service is provided on site. CCLS Response: CCLS has modified off site intake procedures so as to ensure full client eligibility checking in one of three ways: 1. pre-screening and checking prior to the delivery of services at an off-site location; 2. remote access to the ACMS from the off-site location; 3. having applicants call in from the off-site location so that an intake worker can conduct the client eligibility check;

CCLS must ensure that intake staff correctly notes the manner in which an applicant is screened (*e.g.*, in-house, by phone, etc.); that conflict checks are conducted prior to obtaining case specific facts or financial information from the applicant that may be confidential; ensure that the income or assets that a domestic violence victim may jointly receive or owns with its aggressor are not considered in the assessment of economic eligibility for services of said victim; that intake staff are aware of the program's income and assets ceilings, the applicable exceptions when the applicant is over the income, and the assets waiver policy and limits; that as part of the income and assets eligibility screening, the applicant is always asked about prospective income and assets; that the intake conducted at outreach and legal clinics is appropriate to obtain all the required and necessary information to determine the eligibility of every applicant for service, including conflict and duplicate cases check, and that coming out from that scenario only individualized legal assistance services can be reported as cases; and that intake staff receives and are continuously trained and instructed about the requirements of the CSR Handbook. CCLS Response: Since the visit CCLS has conducted trainings and implemented a plan for continuous training.

Finding 3: Sampled case files evidenced substantial compliance with income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), § 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines (FPG). A limited number of case files evidenced that services were provided to an over income client without the appropriate exception approval. CCLS Response: This issue was likewise addressed in the all staff meeting and the John Paul Kemp trainings.

CCLS should ensure that an over-income exception approval is obtained for all applicants whose income is over 125% of FPG before they are accepted as clients. CCLS Response: This was likewise addressed in the all staff meeting and the John Paul Kemp trainings.

Finding 4: Samples cases evidenced compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d) but non-compliance with the documentation requirements of CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4 due to the manner in which intake is conducted.

The Financial Eligibility guidelines approved by the CCLS Board of Directors on September 7, 2005, establishes the program's asset ceiling at \$15,000. Exempt from consideration is the applicant or household's principal residence, vehicles used by the applicant or household for

transportation, assets used in producing income and other assets which are exempt under State or Federal law. The policy does not list the assets which are exempt under State or Federal law but provides two website addresses to obtain information on State law.² It is recommended that CCLS specifically list in its policy the assets exempt from attachment that it wishes to exempt in asset eligibility determination, to ensure staff understand the parameters of the exemptions and apply them in a consistent manner. CCLS Response: The CCLS Board of Directors adopted an updated financial eligibility policy in May 2011 subsequent to the visit. As with the previous policy the new one provides, in part:

“ A listing of exempt assets is available at: www.courtinfo.ca.gov/forms/documents/ej155.pdf. A listing of the amounts of the exemption on assets is available at: www.courtinfo.ca.gov/forms/documents/exemptions.pdf”

Hard copies of the linked documents have been provided to all intake workers. In addition, these websites have been bookmarked in the web browser on each of the intake workers' computer work stations. Although the onsite review team members were unable to gain access to either of the web documents during the visit, we have rechecked the links and find them to be working at this time.

CCLS is in compliance with the asset eligibility documentation as required by 45 CFR §§ 1611.3(c)(d) but in non-compliance with the documentation requirements of, CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4 due to the manner in which intake is conducted.

CCLS Response: Please see response to Finding No. 2 above. In addition, CCLS has conducted training in order to assure compliance with § 5.4 of the CSR handbook

CCLS must cease counting food stamps as assets and remove it from the asset source drop-down box, and start recording the exact amount of assets for each client as required by CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. CCLS Response: We have done this.

Finding 5: With two (2) exceptions sampled cases evidenced compliance with the documentation requirements of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). Furthermore, CCLS is in substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 5.5. A limited number of case files included undated citizenship attestations and/or no documentation as to when staff verified alien eligibility. CCLS Response: As noted in the draft report, during the time of the visit CCLS reminded intake workers of the need to date the verification of alien eligibility. This was likewise addressed in April 13 all staff meeting and the John Paul Kemp trainings.

Finding 6: Sampled cases evidenced compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). CCLS Response: We agree with this finding.

Finding 7: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts). CCLS Response: We agree with 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). CCLS Response: We agree with this finding.

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

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

It is recommended that CCLS add a non-CSR closure code to the ACMS Reason Closed drop-down box for use when cases are deselected. It is also recommended that CCLS conduct training on closure codes. CCLS Response: CCLS has added a non-CSR closing code. The need to insure the correct closing code was likewise addressed in the all staff meeting and the John Paul Kemp trainings. It has been further discussed by the closed case reviewers.

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

It is recommended that CCLS review its case review procedures to determine and identify changes that would improve compliance with case closing procedures. It is also recommended that CCLS periodically generate case lists by office to ensure that open cases that are unassigned or assigned to advocates no longer at the program are captured, instead of only generating lists by current case handlers.

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

CCLS Response: Since the visit CCLS has implemented protocols designed to assure timely closing of all cases. Aged, open cases are now reviewed by all team leaders on a more frequent basis to prevent cases from becoming dormant. In addition we have established that twice monthly, on the same dates and time in all three offices, all advocates will close all cases on which they have completed their work since the previous case closing date. In addition, we have likewise established twice monthly closed case reviews in which the reviewers in all three offices

meet at the same time and date so as to prevent the creation of any bottlenecks in the closing review.

Finding 12: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.). CCLS Response: We agree with this finding.

Finding 13: Review of CCLS' policies and the list of attorneys who have engaged in the outside practice of law, revealed that CCLS is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).). CCLS Response: We agree with this finding.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).). CCLS Response: We agree with this finding.

Finding 15: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).). CCLS Response: We agree with this finding.

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

Finding 17: CCLS is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow up of the PAI cases. Additionally the review of CCLS' Private Attorney Involvement (PAI) fiscal activities concluded that CCLS complies with the accounting and fiscal requirements of 45 CFR Part 1614 (Private attorney involvement).). CCLS Response: We agree with this finding. We note, however, that the draft report indicates that California Rural Legal Aid (sic) Foundation (CRLAF) and California Rural Legal Assistance (CRLA) are located in the same office building as the main office of CCLS. Although there is signage which indicated CRLAF is located in that building, that signage is old. CRLAF had moved out of the building some time prior to CCLS occupying it. The draft report also indicates that "The Executive Director stated that they have no relations with either of the two entities located in the building." While the director may have indicated that there are no relationships which would raise 45 CFR §1610.8 *Program Integrity of Recipient* issues, CCLS does of course interact with CRLA and CRLAF as it does with other legal aid providers in California.

Finding 18: The review of documentation related to CCLS' payment policies and procedures determined that the program complies with the requirements of 45 CFR Part

1627 (Subgrants and membership fees or dues).). CCLS Response: We agree with this finding.

Finding 19: The sample documentation reviewed indicates that CCLS is in compliance with the requirements of 45 CFR Part 1635 (Timekeeping requirements).). CCLS Response: We agree with this finding.

Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).). CCLS Response: We agree with 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).). CCLS Response: We agree with 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).). CCLS Response: We agree with this finding.

Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).). CCLS Response: We agree with this finding.

Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).). CCLS Response: We agree with this finding.

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

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).). CCLS Response: We agree with this finding.

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).). CCLS Response: We agree with this finding.

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

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)).). CCLS Response: We agree with this finding.

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

Finding 31: A limited review of CCLS' internal control policies and procedures demonstrated that the program's policies and procedures compare favorably to LSC's Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Accounting Guide for LSC Recipients (2010 Edition) and LSC Program Letter 10-2).). CCLS Response: We agree with this finding.

From: Chris Schneider [mailto:chris@centralcallegal.org]
Sent: Thursday, September 15, 2011 6:40 PM
To: Shila Mashhadishafie
Subject: Re: Quick follow up.

Shila,

Concerning recommendation #1.

Team leaders have reviewed all open cases to identify dormant or inactive files to assure that they will be rejected and excluded from CSR submissions. Also, in our case twice monthly case closing sessions (described in the last paragraph on page 5 and first paragraph on page 6 of our Response to Draft Report) we check for timely closing.

Recommendation 2:

We have done and continue to do that in our twice monthly case closing sessions referenced above.

Required Action 7

We utilize our case closing sessions referenced above to assure that the file contains a description of the legal assistance provided.

I hope this addresses any questions you have.

Thanks,

Chris