



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Anishinabe Legal Services, Inc.
July 18 – 21, 2011

Follow-Up Review
to a
Case Services Report /Case Management Systems Review

Recipient No. 724018

I. EXECUTIVE SUMMARY

Finding 1: ALS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Accordingly, Required Corrective Action Nos. 1 and 2 can be closed.

Finding 2: ALS' financial eligibility policy is compliant with 45 CFR Part 1611.

Finding 3: ALS' intake procedure substantially complies with LSC regulatory requirements.

Finding 4: Although ALS has established asset ceilings, it is unclear whether all of ALS' exclusions are exempt from attachment under federal or state law.

Finding 5: ALS' citizenship attestation is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5, however, one (1) of the files reviewed during the FUR lacked the citizenship/alien eligibility documentation required by LSC.

Finding 6: Eight (8) exceptions to the requirements of 45 CFR § 1611.9 were noted.

Finding 7: ALS' governing body adopted the current priorities at its December 11, 2010 meeting.

Finding 8: With four (4) exceptions, the files that were reviewed during the FUR demonstrated that ALS' application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011).

Finding 9: The files that were reviewed during the FUR indicate that ALS is not in compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely Closing of Cases).

Finding 10: ALS no longer handles client trust accounts.

Finding 11: ALS revised its Accounting Manual in 2009, but it now needs to be updated.

Finding 12: ALS' Personnel Policy Manual requires updating to reflect current practice.

Finding 13: ALS has adequate segregation of duties and internal controls. However, it does not have a formal contract for its financial services.

II. BACKGROUND OF REVIEW

On July 18 – 21, 2011, the Office of Compliance and Enforcement (“OCE”) conducted an on-site Follow-Up Review (“FUR”) to a Case Service Report/Case Management System (“CSR/CMS”) at Anishinabe Legal Services, Inc. (“ALS”). The team consisted of three (3) OCE Program Counsel and two (2) OCE Program Analysts. In accordance with the approved work plan, the team visited ALS’ Cass Lake and White Earth offices, and met with ALS’ Financial Administrator at Legal Services of Northwest Minnesota Corporation’s Moorhead office.

The focus of the FUR was ALS’ response to the corrective actions required by OCE in its November 25, 2008 Final Report (the “Report”).¹ As such, the team evaluated ALS’ financial eligibility policy and its intake procedures, its priorities, and reviewed 230 files, including 70 open files, 55 closed 2011 files, 65 closed 2010 files, and 40 closed 2009 files. Forty-one (41) of the 230 files that were reviewed were targeted; the remaining files were randomly selected.² Additionally, OCE reviewed ALS’ Personnel Manual, bank reconciliations, and a sample of its travel expenditures, vendor payments, cash disbursements, and credit card payments.

By letter dated September 23, 2011, OCE issued a Draft Report (“DR”) detailing its Findings, Recommendations, and Required Corrective Actions. ALS was afforded 30 days to review the DR and submit written comments. On November 3, 2011, ALS submitted its comments to the DR. OCE reviewed the comments, but requested additional information from ALS. On November 17, 2011, ALS submitted a revised response to the DR. The response included a number of actions anticipated to be completed by ALS, but not yet implemented. In an effort to close as many of the DR’s Required Corrective Actions as possible, OCE withheld issuance of this Final Report until implementation of the actions anticipated by ALS. On February 23, 2012, ALS submitted a response to the DR that included the actions implemented by ALS and its Board of Directors.

Overall, ALS was in agreement with the Findings contained in the DR and worked cooperatively with OCE to close many of the DR’s Required Corrective Actions. OCE has carefully considered ALS’ comments and has made such revisions to the DR as OCE deems appropriate.³ Additionally, based on ALS’ comments, OCE has closed 2008 Required Corrective Action Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, and 15, as well as 2012 Required Corrective Action Nos. 1, 2, 4, 6, and 7. OCE requests further action by ALS with respect to 2012 Required Corrective Action Nos. 3 and 5.

¹ During the follow-up visit, OCE also reviewed ALS’ compliance with other regulatory and reporting requirements. The FUR demonstrated ALS’ compliance with the requirements 45 CFR Parts 1608, 1609, 1612, 1613, 1615, 1617, 1632, 1633, 1636, 1637, 1638, 1642, and 1643, the requirements of 42 U.S.C. 2996f, and the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2.

² The team did not request that ALS pull any additional files.

³ A copy of ALS’ comments has been attached as an appendix hereto.

III. FINDINGS

Finding 1: ALS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Accordingly, Required Corrective Action Nos. 1 and 2 can be closed.

Recipients are required to utilize an automated case management system ("ACMS") and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed., as amended 2011, as amended 2011), § 3.1.

OCE's November 25, 2008 Final CSR/CMS Report (the "2008 Report") found that ALS' ACMS was insufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. The Report cited numerous instances of inconsistent information contained in the case files and the ACMS, and rejected files, matters and administrative files that were mistakenly included in ALS' CSR data submission. The Report also stated that the number of cases contained on the case lists provided by ALS was inconsistent with the number of cases contained in ALS' CSR data submission. Additionally, the Report indicated that ALS was unable to replicate its CSR data submission from prior years. Consequently, ALS was required to take corrective action to ensure that the ACMS is sufficient to record accurate and timely information regarding files, and to ensure the integrity of CSR data previously submitted.

Based on discussions with ALS, a review of the ACMS, and a comparison of the information yielded by the ACMS to information contained in the files sampled, ALS' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. The file information disclosed by ALS during the FUR was generally consistent with the information contained in the case lists. Although there were 15 open files that contained funding codes that were different from the funding codes stated in the case lists, certain adjustments or corrections to the ACMS or the file, *e.g.*, advocate, funding code, closing code, are often made to ensure accuracy and facilitate effective case management.⁴

As well, prior to the FUR, OCE noted that the list of closed 2009 cases contained 112 more cases than ALS reported in its 2009 CSR data submission. ALS explained that because its PIKA software was outdated, it had a difficult time ascertaining which cases were reported in the 2009 CSR data submission. ALS explained that PIKA had issued at least two (2) versions since the version that it was using, but that it would be installing the current PIKA software on August 3, 2011. OCE noted that the number of cases contained on the closed 2010 case list submitted by ALS prior to the FUR was consistent with the number of cases reported in ALS' 2010 CSR data submission.

⁴ The 15 open files included Cass Lake open File Nos. 01-09-05909 and 01-11-07022; White Earth Open File Nos. 01-11-07113, 01-10-06911, 01-11-07117, 01-11-07043, 01-09-06212, 01-10-06928, 01-11-07118, and 02-10-06424; and Red Lake Open File Nos. 01-09-06293, 01-10-06862, 01-10-06777, 01-09-06021, and 01-08-05175.

The discrepancies noted in the open files are consistent with ensuring accuracy and effective case management and does not necessarily implicate the sufficiency of the ACMS. In fact, OCE noted that all of the information in the closed files was consistent with the information in the case lists.⁵ Moreover, considering that ALS has taken measures to improve the effectiveness of its ACMS, 2008 Required Corrective Action Nos. 1 and 2 can be closed.

In its response to the DR, ALS stated that it is in agreement with Finding 1 and appreciates LSC's recommendations to close Required Corrective Action Numbers 1 and 2.

ALS' only response to Finding 1 was in regards to Footnote #4 on the bottom of Page 3, which referenced White Earth Case file No. 01-06-0309, and stated "it could be an indication of the need for more active management review of ALS' open case files". ALS noted that it recently revisited and revised its management review system to ensure total compliance in every case file opened. ALS stated that it has instituted bi-annual open and closed case spot checks for every case handler's open cases (coded as either pending or accepted under ALS' Case Management System-CMS). Twice a year, the Supervising Attorney at ALS will review 10 open and 10 recently closed case files of every advocate (recently closed meaning cases closed within the past 12 months). These files will be randomly selected by the office manager. After close and detailed inspection of each selected case file, the Supervising Attorney will then follow up and meet with each case handler to discuss compliance with spot checks, and if necessary, will institute additional training. The supervising attorney will then report directly to the Executive Director with results, and if necessary, additional training either given or needed as a result of spot check results.

As the Supervising Attorney also handles a caseload, the Executive Director will perform the 10 open/10 recently closed case-file spot check on the Supervising Attorney.

While ALS compliance continues to improve due to increased efforts, training, and direct supervision, ALS recognizes the need for continued proactive management supervision and training. ALS will continue to review and revisit its efforts while working towards full compliance in every case.

OCE finds ALS' comments responsive and no further action appears warranted at this time.

Finding 2: ALS' financial eligibility policy is compliant with 45 CFR Part 1611.

LSC regulations require that the governing body of a recipient adopt policies consistent with 45 CFR Part 1611 for determining the financial eligibility of applicants and groups. At a minimum, each recipient's financial eligibility policy must: (1) specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC

⁵ There was, however, one (1) file, White Earth open File No. 01-06-0309, that ALS stated had remained inactive in its ACMS. While this file does not necessarily implicate the sufficiency of ALS' ACMS, it could be an indication of the need for more active management review of ALS' open case files.

regulations may receive legal assistance supported with LSC funds; (2) establish an annual income ceiling not to exceed 125% of the Federal Poverty Guidelines; (3) establish asset ceilings; and (4) specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser. *See* 45 CFR §1611.3; *see also*, 70 *Federal Register* 45545, at 45550 (August 8, 2005).

As part of its financial eligibility policy, recipients may adopt authorized exceptions to its annual income ceiling consistent with 45 CFR § 1611.5. *See* 45 CFR § 1611.3(b)(2). The policy may also authorize a waiver of the recipient's asset ceilings for specific applicants under unusual circumstances and when approved by the Executive Director, or his/her designee. However, when the asset ceiling is waived, recipients are required to document the reasons for the waiver and maintain such records as are necessary to inform LSC of the reasons for such waiver. *See* 45 CFR § 1611.3(d)(2). Additionally, the policy may permit financial eligibility to be determined by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families, provided that the recipient has determined that the income standards of the governmental program are at or below 25% of the Federal Poverty Guideline and that the governmental program has eligibility standards which include an asset test. *See* 45 CFR §§ 1611.3(f) and 1611.4(c); *see also*, 70 *Federal Register* at 45553.

The CSR Handbook (2008 Ed., as amended 2011) requires that recipients record the number of members in the applicant's household and the total income received by all members of the applicant's household and the value of the household assets. For cases in which the recipient determines financial eligibility based upon consideration of one or more of the authorized exceptions adopted by its governing body, the eligibility documentation must also include the specific facts and factors relied upon in making such determination. *See* CSR Handbook (2008 Ed., as amended 2011), §§ 5.2 and 5.3. The documentation of eligibility must be recorded electronically in a case management system record, or in a simple form as provided by 45 CFR § 1611.7(b) and shall be preserved for audit purposes for a period of five years. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

The 2008 Report required that ALS' governing body adopt a new financial eligibility policy, complete with an annual income ceiling and an asset ceiling; that ALS train staff and ensure a full comprehension of such financial eligibility policy, LSC Program Letter 06-2 (February 21, 2006), and the documentation requirements established by 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3; and that ALS' governing body take appropriate action in adopting a government benefits exception. *See* 2008 Required Corrective Action Nos. 4, 5, and 6.

During the FUR, ALS confirmed that its governing body adopted a financial eligibility policy in January 2006. The annual income ceiling established by the policy is adjusted annually to conform to LSC's annual calculation of 125% of the Federal Poverty Guideline ("FPG") and ALS confirmed that staff had received training on the policy and the requirements of 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3. However, in reviewing the policy, OCE noted that several revisions are warranted.

First, the policy fails to specify that in assessing the financial eligibility of an individual known to be a victim of domestic violence, ALS may consider only the income and assets of the applicant and may not consider any assets jointly held with the abuser.

ALS was advised that LSC regulations require that, at a minimum, each recipient's financial eligibility policy must: (1) specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds; (2) establish an annual income ceiling not to exceed 125% of the Federal Poverty Guidelines; (3) establish asset ceilings; and (4) specify that, notwithstanding any other provisions of the regulation or the recipient's financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly held with the abuser. *See* 45 CFR § 1611.3(e); *see also*, 70 *Federal Register* 45545, at 45550 (August 8, 2005). Accordingly, ALS is required to revise its financial eligibility policy consistent with 45 CFR § 1611.3(e).

Second, OCE noted that the ALS has adopted authorized exceptions that are consistent with 45 CFR § 1611.5(a)(4), except that ALS has also included "liquid net assets."⁶ As part of its financial eligibility policy, a recipient may adopt authorized exceptions to its annual income ceiling consistent with 45 CFR § 1611.5. *See* 45 CFR § 1611.3(c)(2). In doing so, recipients may adopt all, some, or none of the authorized exceptions listed at 45 CFR § 1611.5. However, in making financial eligibility determinations regarding individual applicants, recipients are required to make an income eligibility determination and an asset eligibility determination. *See* 45 CFR § 1611.7(a)(1); *see also*, 45 CFR § 1611.5(a). These seemingly separate determinations are not uncommon to recipients. It is precisely because income eligibility determinations are different from asset eligibility determinations that recipients often encounter individual applicants who are asset eligible, but income ineligible, and vice versa. As such, an applicant's ownership of liquid net assets is an appropriate consideration in determining the applicant's asset eligibility, but it is not an appropriate consideration in determining the income eligibility of an applicant whose income exceeds ALS' annual income ceiling.

Third, the policy contains a subparagraph entitled "'Means Tested' Eligibility." The subparagraph reads:

If a person has been determined eligible to receive assistance in a different poverty/income based program such as general assistance, the Minnesota Family Investment Program (MFIP), and Social Security Programs such as SSI and OASDI, the individual is deemed to have met the income and asset eligibility requirements for Anishinabe Legal Services.

LSC regulations permit recipients to determine an applicant's financial eligibility – income and assets - by reference to the applicant's receipt of benefits from a governmental program for low-

⁶ The policy also includes "fixed debts and obligations, including ... medical expenses" as an authorized exception. ALS may appropriately consider medical expenses as a fixed debt and obligation, but only to the extent that such expenses are fixed both in terms of time and amount. That is to say, the expense is payable in the same amount and at the same intervals.

income individuals or families, provided the applicant's income is derived solely from the governmental program and the recipient's governing body has determined that the income standards of the governmental program are at or below 125% of the FPG. *See* 45 CFR § 1611.3(f); *see also*, 70 *Federal Register* 45547, 45552 - 45553 (August 8, 2005). Hence, this subparagraph is consistent with LSC regulations only to the extent that ALS revises the language to clarify that it is only applicable to applicant's whose sole source of income is from a governmental program for low-income individuals or families, and only to the extent that ALS can demonstrate that its governing body has reviewed the income and asset standards of the governmental program and determined that such standards are consistent with ALS' own annual income and asset ceilings.

OCE also noted that ALS' financial eligibility policy contains language that is inconsistent with LSC's treatment of Indian trust monies in making income determinations. Specifically, the policy states:

Federal trust property or tribal leased land will not be considered in determining eligibility, but the income from such property (rents, royalties, etc.) will be considered.

In 2005, LSC revised its definition of "income." In doing so, it acknowledged that several provisions of federal law regulate whether or not income or interests in Indian trusts should be considered as income. Consistent with 25 U.S.C. §§ 1407 and 1408, LSC revised its definition of "income" to exclude up to \$2,000.00 per year of funds received by individual Native Americans that is derived from Indian trust income.⁷ *See* 45 CFR § 1611.2(h)(i); *see also*, 70 *Federal Register* 45545, 45549 (August 8, 2005) and LSC Office of Legal Affairs ("OLA") External Opinion 99-17 (August 27, 1999).

Although ALS' policy excludes federal trust property or tribal leased land from consideration, it does not exclude the first \$2000.00 per year of funds received by individual Native Americans that are derived from Indian trust income. Inasmuch as other provisions of federal law prohibit consideration of this amount in determining eligibility, ALS is required to revise its financial eligibility policy accordingly.

OCE also noted that ALS' financial eligibility policy contains language that is obsolete. In particular, the policy distinguishes between "liquid" and "non-liquid" assets. ALS is advised that the distinction between liquid and non-liquid assets was abandoned by LSC in favor of language that focuses more on the availability of the asset and the ease of converting the asset to cash. As noted previously, the language of Part 1611 is intended to require that recipients consider all assets upon which an applicant might draw in obtaining private legal counsel. In revising Part 1611, it was determined that "liquid" and "non-liquid" characterizations obscured this understanding. Accordingly, the terms were eliminated, *see* 70 *Federal Register* 45545, 45547 (August 8, 2005), and ALS is instructed to do likewise.

⁷ 25 U.S.C. § 1407 states:

Interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to \$2,000.00 per year of income received by individual Indians that is derived from such interests shall not be considered income, in determining eligibility for any ... federally assisted program.

Additionally, the policy, at Section E(d) states:

Evidence of prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, will disqualify the persons from receiving legal assistance with ALS.

and in Section E(f) states

In determining to serve a client over the maximum income level, the program will consider the factors listed in E(a)(3)-(5) above; similarly, in determining to serve a client under the maximum income level, the program will also consider the factors listed in E(a)(1)-(2) above.

The quoted language corresponds to language in the pre-2005 versions of Part 1611. See 48 *Federal Register* 54202 (November 30, 1983). However, LSC abandoned these considerations when it revised Part 1611 in 2005, and ALS is instructed to do likewise.

Regarding 2008 Required Corrective Action Nos. 4, 5, and 6, ALS was required to adopt a financial eligibility policy that is consistent herewith and the requirements of 45 CFR Part 1611. In doing so, ALS is instructed to:

- a. ensure that such policy contains a statement consistent with 45 CFR § 1611.3(e);
- b. ensure that such policy acknowledges the treatment of income derived from Indian trust income, consistent with 45 CFR § 1611.2(h)(i);
- c. ensure that all authorized exceptions adopted by ALS are consistent with 45 CFR § 1611.5; and
- d. ensure that any government benefits exception adopted by its governing body is adopted in accordance with the instructions outlined at 70 *Federal Register* 45547, 45552 - 45553 (August 8, 2005).

In its initial response to the DR, ALS stated that it has revised its financial eligibility policy as a result of LSC's visit and the DR. Specifically, ALS stated that while all staff have been aware of the requirement of 45 CFR § 1611.3(e) and have followed it for several years in intake applications for assistance by victims of domestic violence, ALS recognized that it must be included in ALS' formal written financial eligibility policies. ALS further stated that its financial eligibility policy would be revised to remove consideration of liquid net assets as an exception in determining the income eligibility of an applicant whose income exceeds its annual income ceiling. ALS also responded that the "Means Tested Eligibility" subparagraph noted by LSC in the DR will be amended to clarify that this policy will only be relevant and applicable for applicants whose *sole* source of income is from a government program or programs for low-income individuals or families, and will also clarify that *only* those particular governmental programs that have been previously reviewed and approved by ALS' governing board and listed in the revised policies, *i.e.*, found by the board to be consistent with all ALS annual income and asset ceilings, can and will be considered.

ALS respond indicated that the policy would be revised to exclude the first \$2,000.00 per year of funds received by individual Native Americans that are derived from Indian trust income; that the distinction between liquid and non-liquid assets would be eliminated; that consideration of evidence of prior administrative or judicial determinations that a person's lack of income results from refusal or unwillingness to seek or accept employment will be eliminated; and that section E(f) would be eliminated.

ALS' revised financial eligibility policy was approved by its Board of Directors on December 10, 2011. OCE reviewed the revised financial eligibility policy submitted by ALS and is satisfied that the action taken by ALS is consistent with 2012 Required Corrective Action Nos. 1.a., 1.b., and 1.c.⁸ Accordingly, as a result of the actions taken by ALS, its financial eligibility policy is compliant with 45 CFR Part 1611 and, consequently, 2008 Required Corrective Action Nos. 4, 5, and 6, and 2012 Required Corrective Action No. 1 is closed.

Finding 3: ALS' intake procedure substantially complies with LSC regulatory requirements.

In making financial eligibility determinations regarding individual applicants, recipients are required to make reasonable inquiry regarding sources of the applicant's income, income prospects and assets. *See* 45 CFR § 1611.7(a)(1). As well, intake procedures must include instruction to ask sufficient questions of the applicant to determine the total amount of household income and assets, and the recipient must be able to provide reasonable evidence that its staff practice these procedures. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

The 2008 Report found that ALS' intake procedures did not support the recipient's compliance related requirements. According to the 2008 Report, this Finding was based on the intake screeners' unfamiliarity with ALS' financial eligibility policy, LSC Program Letter 06-02, "Violence Against Women Act 2006 Amendment" (February 21, 2006), and the incorrect implementation of the financial eligibility policy by the staff.

As noted in the previous Finding, the 2008 Report found that ALS was non-compliant with the documentation requirements for applicants whose incomes exceed the recipient's annual income ceiling. *See* 45 CFR § 1611.4 and CSR Handbook (2008 Ed., as amended 2011), § 5.3. Accordingly, 2008 Required Corrective Action No. 4 directed ALS to ensure that staff are trained relative to the documentation requirements established at 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

ALS continues to use a centralized telephone intake system. The majority of applicants for legal assistance telephone ALS' toll free number which is routed to the Cass Lake office. Although the White Earth and Red Lake offices accept walk-in applicants, typically, such applicants are

⁸ OCE assumes that the fact that the revised policy makes no mention of the practice of establishing financial eligibility permitted by 45 CFR § 1611.3(f) reflects a conscious decision by ALS not to establish financial eligibility by reference to an applicant's receipt of governmental benefits for low-income individuals and families.

instructed to telephone the centralized intake system. OCE was advised during the FUR that there are relatively few walk-ins at the White Earth and Red Lake office.

Intake in each of the three (3) offices was fairly consistent. All applicants are screened for income, assets, citizenship/alien eligibility, case type, and conflicts screening. The information collected includes the applicant's name, address, date of birth, Social Security number, race, domestic violence, household size, tribe, composition of household, income of all household members, source of income, the value of all household assets such as real property, personal property, savings accounts, checking accounts, etc., and citizenship or alien status. Walk-in applicants are required to execute all necessary documents, including retainer agreement, application /intake form and citizenship attestation, at the time of intake. All other applicants are required to execute such documents at the first scheduled appointment.

During the FUR, OCE interviewed the two (2) people in the Cass Lake office, as well as those persons in the White Earth and Red Lake offices, who are responsible for intake. All persons interviewed demonstrated sufficient familiarity with ALS' financial eligibility policy, but none were aware of the requirement to inquire regarding income prospects. Consequently, during the FUR, OCE provided ALS a copy of OLA Advisory Opinion AO 2009-1006 (September 3, 2009) and discussed the level of inquiry required by the Advisory Opinion. Similarly, ALS continued to demonstrate an unfamiliarity with LSC Program Letter 06-02, but this was also corrected by providing a copy of the Program Letter and discussing its content.

All persons interviewed during the FUR were aware that applicants whose income exceeded ALS' established annual income ceiling may be assisted upon consideration of one or more of the authorized exceptions adopted by ALS' governing body. Such consideration must be approved by the Executive Director and ALS has developed a form to document its consideration of such authorized exceptions. However, the form is inconsistent with ALS' financial eligibility policy.

The form is entitled "Anishinabe Legal Services § 1611 Form," and includes factors that are not included in the policy, *i.e.*, "other significant factors relating to financial eligibility to afford legal assistance, including availability of affordable private counsel" and "the consequences for applicant if legal services are denied." It also misstates one of the factors that have been adopted, *i.e.*, "medical and other expenses associated with age or physical infirmity of resident family members," and omits several of the factors that have been adopted, *i.e.*, current income prospects, unreimbursed medical expenses, non-medical expenses associated with age or physical infirmity and current taxes.

During the FUR, OCE reviewed one (1) LSC-funded file, Red Lake closed 2010 File No. 01-10-06407, which involved an applicant whose income exceeded ALS' annual income ceiling. The documented factor considered in determining the applicant's eligibility was "availability of affordable private counsel." As noted in Finding 2, ALS was advised that this is not an appropriate consideration.⁹

⁹ OCE reviewed seven (7) other files that lacked the income documentation required by CSR Handbook (2008 Ed., as amended 2011), § 5.3. The first exception was Red Lake open File No. 01-11-07218, which lacked evidence of

During the FUR, ALS was advised that the form should contain only those factors that are included within ALS' financial eligibility policy. "Other significant factors" may be considered, but only to the extent that ALS has adopted such as an authorized exception. Additionally, ALS was advised that under no circumstances may it consider the availability of affordable private counsel or the consequences for the applicant if legal services are denied.

OCE also noted that ALS continues to document its consideration of the authorized exceptions differently for applicants whose income exceeds its annual income ceiling but does not exceed 150% of the FPG, and those whose income is above 150% of the FPG but does not exceed 200% of the FPG. The former are documented in the ACMS, while the latter are documented on the form entitled "Anishinabe Legal Services § 1611 Form."

ALS was cautioned that absent documentation of its consideration of one or more of the authorized exceptions adopted by its governing body, legal assistance provided to any and all persons whose income exceeds its annual income ceiling may not be charged to its LSC fund, nor may such legal assistance be included in its CSR data submission.

Although ALS' intake practices and procedures substantially complies with 45 CFR § 1611.7(a)(1), for the reasons stated in this Finding, it is recommended that ALS be required to ensure that reasonable inquiry is made of each applicant regarding income prospects. ALS should further be required to revise its "1611 Form" to reflect only those authorized exceptions adopted by its governing body in its financial eligibility policy and ensure that financial eligibility determinations made with respect to applicants whose income exceeds ALS' annual income ceiling are documented consistent with the requirements of 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

In response to the DR, ALS stated that it immediately changed its intake form to include inquiries about income prospects after being alerted to this requirement during the FUR. ALS also stated that it has worked with its case management system operators to include information on income prospects in its online case management system.

Additionally, ALS commented that LSC correctly identified problems that ALS had with its old "Anishinabe Legal Services § 1611 Form" and corresponding written policies in ALS' financial eligibility policy. As with income prospects, ALS acknowledged that it was instructed regarding these issues during the FUR. ALS immediately updated the form and its policy consistent with those instructions and the observations made in the DR.

As noted previously, ALS' revised financial eligibility policy was approved by its Board of Directors on December 10, 2011. Based on OCE's review of the revised financial eligibility policy and the revised "Anishinabe Legal Services § 1611 Form," OCE is satisfied that the action taken by ALS is consistent with 2012 Required Corrective Action No. 2. Accordingly, 2012 Required Corrective Action No. 2 is closed.

any income screening. The remaining six (6) exceptions involved cases in which ALS determined financial eligibility on the basis of its consideration of one or more of the authorized exception adopted by its governing body. *See* Cass Lake open File Nos. 01-10-06333 and 01-11-07091, Cass Lake closed 2009 File No. 01-08-05015, Red Lake closed 2010 File No. 01-10-06407, and Red Lake closed 2009 File Nos. 01-08-05378, and 01-08-05379. These files lacked documentation of ALS' consideration of any of the authorized exceptions adopted by its governing body and should not have been included in ALS' CSR data submission to LSC.

Finding 4: Although ALS has established asset ceilings, it is unclear whether all of ALS' exclusions are exempt from attachment under federal or state law.

The 2008 Report, at 2008 Required Corrective Action Nos. 7 and 10, directed ALS to ensure that all cases included in its CSR data submission contain income and asset documentation consistent with LSC reporting requirements.¹⁰ With two (2) exceptions, the files that were reviewed during the FUR contained the asset determination required by LSC. See Red Lake open File No. 01-10-06718 and Red Lake closed 2010 File No. 05036. All of the reported files contained asset determinations consistent with LSC reporting requirement.

The 2008 Report also questioned whether ALS had established asset ceilings as required by 45 CFR § 1611.3(d)(1). According to the 2008 Report, four (4) different versions were provided and the asset the asset screening conducted by ALS intake workers was inconsistent.

During the FUR, ALS confirmed that its governing body adopted a financial eligibility policy, including asset ceilings, in January 2006. However, in reviewing the asset ceiling, OCE noted that it excludes certain property that is not included in 45 CFR § 1611.3(d).

ALS is advised that the list of excludable asset set forth at 45 CFR § 1611.3(d) is exhaustive. See 70 *Federal Register*. 45545, at 45550 - 45551 (August 8, 2005). Accordingly, ALS' asset policy is consistent with LSC regulations only to the extent that "cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies," and "assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, e.g., specialized vans, wheel chairs and the like" are assets exempt from attachment under state or federal law.

Inasmuch as the FUR demonstrated that ALS is in substantial compliance with CSR Handbook (2008 Ed., as amended 2011), §§ 5.3 and 5.4, 2008 Required Corrective Action No. 7 can be closed.¹¹

However, ALS is required to provide a citation to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies," and "assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, e.g., specialized vans, wheel chairs and the like" from attachment. In response to the DR, ALS stated that the Internal Revenue Service ("IRS") has issued rulings in the past that exclude, for tax purposes, payments made to Indians by the federal government for lands illegally taken. The payments are intended to make the payee whole again and are not income. ALS stated that it will find the current IRS code citation and provide that information to OCE.

OCE requires ALS to provide a citation to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and

¹⁰ Required Corrective Action No. 10 was specific to ALS' Leech Lake Reservation ("LLR").

¹¹ For the same reasons, Required Corrective Action No. 10 can be closed.

incidental to traditional Indian ceremonies,” and “assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, *e.g.*, specialized vans, wheel chairs and the like” from attachment. Accordingly, 2012 Required Corrective Action No. 3 will remain open.

Finding 5: ALS’ citizenship attestation is compliant with CSR Handbook (2008 Ed., as amended 2011), § 5.5, however, one (1) of the files reviewed during the FUR lacked the citizenship/alien eligibility documentation required by LSC.

The 2008 Report cited three (3) case files that lacked the necessary citizenship/alien eligibility documentation, but noted ALS’ improvement. The Report also noted that ALS’ citizenship attestation was not complaint with CSR Handbook (2008 Ed., as amended 2011), § 5.5, which requires a separate signature line associated only with the attestation. Consequently, Required Corrective Action Nos. 8 and 9 directed ALS to ensure that all cases include the citizenship/alien eligibility documentation required by 45 CFR Part 1626 and CSR Handbook (2008 Ed., as amended 2011), § 5.5, and that ALS’ citizenship attestation conform to CSR Handbook (2008 Ed., as amended 2011), § 5.5.¹²

During the FUR, OCE noted that ALS has revised its retainer agreement to include a separate signature line associated only with the attestation. One (1) of the files reviewed, *see* Cass Lake closed 2011 File No. 01-09-05891, lacked the necessary citizenship/alien eligibility documentation but ALS had identified the file for exclusion from its CSR data submission prior to the visit.

ALS was instructed that LSC’s citizenship/alien documentation requirement is more than a reporting requirement. It is a regulatory requirement that, except as provided in LSC Program Letter 06-02, applies, regardless of funding, to all persons receiving legal assistance beyond brief advice and consultation by telephone only.

Therefore, for the reasons stated in this Finding, 2008 Required Corrective Action Nos. 8 and 9 can be closed.¹³

In response to the DR, ALS offered no comments with respect to Finding 5 other than to thank LSC for noting improvements and agreeing to close 2008 Required Corrective Action Nos. 8, 9, and 11.

Finding 6: Eight (8) exceptions to the requirements of 45 CFR § 1611.9 were noted.

LSC regulations require that recipients execute a retainer agreement with each client who receives extended legal services from the recipient. *See* 45 CFR § 1611.9(a). No written retainer

¹² 2008 Required Corrective Action No. 11 also directed ALS to ensure that all reported LLR cases include citizenship/alien eligibility documentation.

¹³ For the same reasons, it is also recommended that 2008 Required Corrective Action No. 11 be closed.

agreement is required for advice and counsel or brief services provided by the recipient. *See* 45 CFR § 1611.9(b).

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 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 lack of a retainer does not preclude CSR reporting eligibility. Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

With three (3) exceptions, all of the files that were reviewed during the FUR that required a retainer agreement contained one. *See* Red Lake open File Nos. 01-11-07095 and 01-10-06862, and Red Lake closed 2009 File No. 01-08-05618. However, 11 of the retainer agreements failed to identify the legal problem for which representation was sought. *See* White Earth closed 2011 File Nos. 01-10-06401, 02-10-06400, 01-09-06247, and 01-09-05676, Cass Lake open File Nos. 01-10-06460 and 01-10-06820, Cass Lake closed 2011 File Nos. 01-09-06713 and 01-09-05891, and Cass Lake closed 2010 File Nos. 01-09-06186, 01-10-06782, and 01-10-06381.

Although § 1611.9 is not a reporting requirement, it is a regulatory requirement. Accordingly, ALS is instructed to ensure that retainer agreements, when required, contain a statement identifying the legal problem for which representation is sought.

In its response to the DR, ALS stated it will continue to increase efforts and supervision, and fully expects continued improvement as it works towards its goal of 100% compliance on every case file opened at ALS.

As discussed in its response to Finding 1, ALS stated that it will continue increasing direct supervision and training for all case-handlers at ALS, through bi-annual spot checks/case compliance reviews, and regular training sessions.

ALS expressed its sincere appreciation for LSC's acknowledgement of the improvements and noted that while it agrees that it has substantially improved, there are more improvements to be made which it is proactively working toward. ALS stated that it will not be completely satisfied with its own efforts until it can reach and maintain 100% accuracy and compliance with all requirements under all grant conditions and ALS policies.

OCE finds ALS' comments responsive and, consequently, 2012 Required Corrective Action No. 4 is closed.

Finding 7: ALS' governing body adopted the current priorities at its December 11, 2010 meeting.

2008 Required Corrective Action No. 3 directed ALS to ensure the adoption of new priorities by ALS' governing body. During the FUR ALS provided its current priorities and explained that such priorities were adopted by its governing body on December 11, 2010. With one (1) exception, the files that were reviewed during the FUR were consistent with ALS' established priorities.¹⁴ Accordingly, 2008 Required Corrective Action No. 3 can be closed.

In its response to the DR, ALS stated that it views White Earth open File No. 01-11-07118 as a matter of client misrepresentation that not only misled ALS, but significantly, the prosecuting attorney/opposing counsel in the matter.

ALS explained that at intake, the client represented to both the ALS intake worker and the assigned case-handler that he/she was an enrolled tribal member at White Earth. ALS only accepted the case because of Minnesota state court precedent forbidding State, *i.e.*, non-Tribal government, forfeiture of an enrolled member's vehicle on the reservation of the vehicle owner's enrollment.

The client's case-handler at ALS promptly and properly asked that the client fax over a copy of his/her tribal enrollment card for verification. The client instead faxed over a White Earth "descendant card" that looked almost identical to a White Earth enrollment card.

When this faxed card copy was presented to the prosecuting attorney, he agreed to release the vehicle to ALS' client, based on the client's representation that he/she was an enrolled tribal member, combined with the fax copy of the descendant card that looked almost identical to an enrollment card.

The misrepresentation did not just mislead ALS. In fact, the prosecutor who released the car was very upset at the ALS case-handler for representing the client as a tribal member and presenting a descendent card as an enrollment card. He promptly let this concern go when ALS informed/reminded him that it was going by the exact same information he was given (client's representations of being a tribal member combined with presentation of what looked to be an enrollment card that we all sincerely believed to be an enrollment card at the time). ALS took this as a teachable moment, and has been very sensitive to, and cognizant of the need to closely study purported White Earth Enrollment Cards to ensure they are not in fact descendant cards.

OCE considers ALS' comments responsive and no further action is warranted at this time.

¹⁴ The exception was White Earth open File No. 01-11-07118. The file involved the civil forfeiture of a vehicle, but the client was not enrolled in the reservation. The priorities provided by ALS included civil forfeiture claims and specified that the "case must arise from the client's reservation of enrollment and [the] client must have received forfeiture notice."

Finding 8: With four (4) exceptions, the files that were reviewed during the FUR demonstrated that ALS' application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011).

2008 Required Corrective Action No. 12 directed ALS to ensure that staff is trained on the proper application of the CSR case closure categories. The ALS staff that I interviewed stated that they were trained toward the end of 2008. The ALS Office Manager stated that in addition to the training, she periodically reviews LSC's "Frequently Asked CSR Questions."

With five (5) exceptions, the files that were reviewed during the FUR demonstrated that ALS' application of the CSR case closure categories is consistent with Chapter VIII, CSR Handbook (2008 Ed., as amended 2011). *See* Cass Lake closed 2010 File No. 01-10-06596 (closed as "uncontested court decision," but the information in the file was more consistent with "contested court decision"); Cass Lake closed 2010 File No. 01-10-06596 (closed as "extensive service," but the information in the file was more consistent with "uncontested court decisions"); Cass Lake closed 2009 File No. 01-09-06296 (closed as "limited action," but the information in the file was more consistent with "counsel and advice"); Red Lake closed 2011 File No. 01-11-07162 (closed as "limited action," but the information in the file was more consistent with "counsel and advice"); and Red Lake closed 2010 File No. 01-08-05036 (closed as "limited action," but the information in the file was more consistent with "extensive service").

Inasmuch as ALS has demonstrated substantial compliance with the requirements of Chapter VIII, CSR Handbook (2008 Ed., as amended 2011), Required Corrective Action No. 12 can be closed.

In its response to the DR, ALS offered no comment to this Finding, except to again note the planned increase in direct supervision, case file spot-checks, and follow-up training, and to thank LSC for agreeing to close 2008 Required Corrective Action No. 12.

OCE considers ALS' comments responsive and no further action is warranted at this time.

Finding 9: The files that were reviewed during the FUR indicate that ALS is not in compliance with CSR Handbook (2008 Ed., as amended 2011), § 3.3 (Timely Closing of Cases).

2008 Required Corrective Action No. 13 directed ALS to ensure that cases are timely closed. During the FUR, the Office Manager confirmed that a management review of the open cases is conducted periodically. However, the Office Manager stated that the process has been impeded by ALS' outdated software.

During the FUR, OCE reviewed eight (8) untimely case files. *See* Cass Lake closed 2011 File Nos. 01-06-02735, 01-08-05580, 01-07-04077 and 01-07-03866, Cass Lake closed 2010 File Nos. 01-09-06025 and 01-08-05275, and Cass Lake closed 2009 File Nos. 01-07-04093 and 01-07-04084. Although all of the closed 2011 files had been identified for exclusion from ALS'

CSR data submission prior to the visit, the others had not been identified and had been erroneously reported to LSC.

OCE also reviewed three (3) inactive files. However, as explained in footnote 4, in preparing for the FUR, ALS discovered that one (1) file had remained inactive in its ACMS. *See* White Earth open File No. 01-06-0309. ALS stated this file would be administratively closed. A second file, Cass Lake open File No. 01-05-01511, had been coded improperly and was not a case at all. The remaining file, Cass Lake open File No. 01-07-08372, was simply an inactive file.

Inasmuch as ALS demonstrated substantial compliance with the requirements of CSR Handbook (208 Ed.), § 3.3, Required Corrective Action No. 13 can be closed.

In its response to the DR, ALS offered no comments to this Finding, except to note that it has upgraded its ACMS and software. ALS stated that it is already noting improvements with the new software, is instituting increased supervision spot checks and training, and is thankful to LSC for closing 2008 Required Corrective Action No. 13.

OCE considers ALS' comments responsive and no further action is warranted at this time.

Finding 10: ALS no longer handles client trust accounts.

2008 Required Corrective Action No. 14 directed ALS to ensure that the client trust accounts are reviewed and balanced. The Report noted a \$15.57 difference between the assets and liabilities in ALS' client trust account.

The desk review of ALS' audited financial statements for 2010 indicated that the program no longer handles client trust funds. This information was confirmed by ALS' Financial Administrator, who stated that ALS no longer handles cash or client trust funds for that matter. OCE also noted that signs were posted in ALS' offices that it no longer handled cash. Accordingly, 2008 Required Corrective Action No. 14 can be closed. In its response to the DR, ALS stated that it is in complete agreement with this Finding.

Finding 11: ALS revised its Accounting Manual in 2009, but it now needs to be updated.

2008 Required Corrective Action No. 15 directed ALS to finalize its Accounting Manual and submit same to OCE within 30 days of the Report. Prior to the FUR, OCE unsuccessfully attempted to locate a copy of the finalized Accounting Manual provided by ALS as per the 2008 Required Corrective Action. OCE contacted ALS and the Executive Director indicated that he did not believe that ALS had provided such. During the FUR, ALS' Financial Administrator provided a copy of the Accounting Policies & Procedures Manual. Board minutes provided by ALS demonstrate that the Manual was approved on February 14, 2009. However, a thorough review of the accounting manual revealed that it no longer accurately reflects the day-to-day operations of ALS in several areas. Inventory and petty cash are just two examples. The manual needs to be updated as soon as possible to be brought into line with actual procedures.

Accordingly, although 2008 Required Corrective Action No. 15 can be closed, ALS is required to review its Accounting Policies & Procedures Manual and revise it to be consistent with current accounting practices.

In its initial response to the DR, ALS stated that its Financial Administrator was preparing the required revisions to its Accounting Manual, which would be presented at the December 10, 2011 Board of Directors meeting.

ALS' later response to the DR did not include a revised Accounting Policies and Procedures Manual. Nor were such revision reflected in the minutes of the December 10, 2011 Board of Directors meeting. Accordingly, 2012 Required Corrective Action No. 5 shall remain open until such time as ALS shall submit a revised Accounting Policies and Procedures Manual to OCE.

Finding 12: ALS' Personnel Policy Manual requires updating to reflect current practice.

A cursory review of the Personnel Policy Manual ("PPM") disclosed that it does not reflect current financial practices at ALS. For example, the PPM states that ALS shall contribute an amount equal to two (2) percent of each eligible employee's salary to a SEP/IRA Account, however, the current practice is for ALS to contribute four (4) percent. The PPM must be reviewed and revised to conform to ALS' policies and procedures.

In its initial response to the DR, ALS stated that its personnel policies have been amended to reflect current financial practices at ALS, which would be presented at the December 10, 2011 Board of Directors meeting.

ALS' later response to the DR included revised personnel policies and the minutes of the December 10, 2011 Board of Directors meeting reflecting action by ALS' governing body. Accordingly, no further action is warranted at this time.

Finding 13: ALS has adequate segregation of duties and internal controls. However, it does not have a formal contract for its financial services.

A review of the internal controls worksheet and accounting records and interviews with the Financial Administrator disclosed that ALS has good segregation of duties, internal controls, and defined procedures through their Accounting Manual. However, prior to the FUR, OCE was advised that ALS' Financial Administrator works part-time for ALS. The Financial Administrator is employed by Legal Services of Northwest Minnesota Corporation. ALS stated that it contracts for the Financial Administrator's services, but there does not appear to be a written contract between ALS and the Financial Administrator, or between ALS and Legal Services of Northwest Minnesota Corporation. The only documentation of the arrangement is a line item in ALS' 2011 budget that states:

Contracted amount for financial services with LSNM at 41,272 as follows: \$32,000 (Gregg*) + \$3,200 Executive Director supervision (Mary Schneider) + 13.5% fringe

Of \$4,752 + \$1,320 to cover LSNM overhead costs. *There was no increase in 2010 Budgeting for an increase in 2011.*

*LSNM salary is reduced by \$8,800 as a result of this contract, yielding gross pay of \$23,200 (\$32,000 – 8,800) to handle Anishinabe financial administration duties.

Regarding contract services, the LSC Accounting Guide for LSC Recipients (2010 Ed.), Appendix VII, “Accounting Procedures and Internal Control Checklist” suggests, among other things, properly executed, written contracts that clearly defines the services to be rendered. Accordingly, it is recommended that ALS be required to enter into a formal, legally binding contract.

It was also disclosed through discussions with Financial Administrator that payroll advances are prohibited by ALS. OCE’s review of the PPM and the General Ledger confirmed that there have been no payroll advances during the review period.

During the FUR, OCE also reviewed the bank account reconciliations for the ALS bank accounts. All were performed timely and accurately.

Both, the vendor list and cash disbursements from 2009 - 2011 were reviewed. No exceptions were noted for either the vendor list or the cash disbursement journal. Similarly, a total of 11 travel charges from each year of the review period were thoroughly reviewed and found to be properly supported. Each contained the original expense reports as support documents.

Finally, OCE was advised that ALS has authorized the use of a company credit card exclusively by the Financial Administrator. The credit card is to be used for program use only. Personal use of the card is not permitted. A random sampling of nine (9) credit card charges spanning the three (3) years of the review period was reviewed, and all of the charges were properly documented with original receipts attached and also properly coded to the appropriate program code.

In its second response to the DR, ALS stated that it has negotiated a contract between it and its Financial Administrator. ALS provided a copy of the contract signed by the Financial Administrator on February 17, 2012.

ALS also responded that the outstanding checks noted in the DR were actually checks written by Legal Services of Northwest Minnesota Corporation, not ALS.

OCE considers ALS’ comments responsive and has revised the DR accordingly. Consequently, 2012 Required Corrective Action No. 6 is closed and 2012 Required Corrective Action No. 7 has been deleted. OCE does, however, have some concerns about the account on which the checks were drawn. It is OCE’s understanding that the checks were drawn on an account that is shared by ALS and Legal Services of Northwest Minnesota Corporation. OCE will explore the propriety of the shared account at a later date and will advise ALS of its findings under separate cover.

IV. RECOMMENDATIONS¹⁵

In view of the foregoing, OCE makes the following recommends that ALS:

Run periodic case management reports in order to ensure the accuracy of the CSR reporting information prior to submission to LSC.

In its response to the DR, ALS stated that it recently revisited and revised its management review system to ensure total compliance in every case file opened. ALS stated that it has instituted bi-annual open and closed case spot checks for every case handler's open cases (coded as either pending or accepted under ALS' Case Management System). Twice a year, the Supervising Attorney at ALS will review 10 open and 10 recently closed case files of every advocate (recently closed meaning cases closed within the past 12 months). These files will be randomly selected by the office manager. After close and detailed inspection of each selected case file, the Supervising Attorney will then follow up and meet with each case handler to discuss compliance with spot checks, and if necessary, will institute additional training. The Supervising Attorney will then report directly to the Executive Director with results, and if necessary, additional training given as needed as a result of the spot checks.

As the Supervising Attorney also handles a caseload, the Executive Director will perform the 10 open/10 recently closed case-file spot checks on the Supervising Attorney's cases.

ALS noted that while its compliance continues to improve due to increased efforts, training, and direct supervision, the program recognizes the need for continued proactive management supervision and training. ALS stated that it will continue to review and revisit its efforts while working towards full compliance in every case.

OCE finds ALS' comments responsive and no further action appears warranted at this time.

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

V. REQUIRED CORRECTIVE ACTIONS

Consistent with the Findings of this report, ALS is required to take the following corrective actions:

1. Revise its financial eligibility policy and in so doing:
 - a. ensure that such policy contains a statement consistent with 45 CFR § 1611.3(e);
 - b. ensure that such policy acknowledges the treatment of income derived from Indian trust income, consistent with 45 CFR § 16112(h)(i);
 - c. ensure that all authorized exceptions adopted by ALS are consistent with 45 CFR § 1611.5; and
 - d. ensure that any government benefits exception adopted by its governing body is adopted in accordance with the instructions outlined at 70 *Federal Register* 45547, 45552 - 45553 (August 8, 2005).

In response to the DR, ALS revised its financial eligibility policy consistent with the 2012 Required Corrective Action No. 1. Accordingly, 2012 Required Corrective Action No. 1 is closed.

2. Revise “Anishinabe Legal Services § 1611 Form” to reflect only those authorized exceptions adopted by its governing body in its financial eligibility policy and ensure that financial eligibility determinations made with respect to applicants whose income exceeds ALS’ annual income ceiling are documented consistent with the requirements of 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

In response to the DR, ALS revised “Anishinabe Legal Services § 1611 Form” consistent with the 2012 Required Corrective Action No. 2. Accordingly, 2012 Required Corrective Action No. 2 is closed.

3. Provide citations to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies,” and “assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, *e.g.*, specialized vans, wheel chairs and the like” from attachment.

OCE finds ALS’ response to this Finding and the 2012 Required Corrective Action unresponsive and directs ALS to provide citations to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies,” and “assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, *e.g.*, specialized vans, wheel chairs and the like” from attachment.

4. Ensure that its retainer agreements, when required, contain a statement identifying the legal problem for which representation is sought.

In its response to the DR, ALS stated it will continue to increase efforts and supervision, and fully expects continued improvement as it works towards its goal of 100% compliance on every case file opened at ALS. As discussed in its response to Finding 1, ALS stated that it will continue increasing direct supervision and training on and for all case-handlers at ALS, through bi-annual spot checks/case compliance reviews, and regular training sessions.

OCE finds ALS' comments responsive and, consequently, 2012 Required Corrective Action No. 4 is closed.

5. Review its Accounting Policies & Procedures Manual and its Personnel Policy Manual and revise same consistent with current practices.

ALS' responses to the DR neglected to include a revised Accounting Policies and Procedures Manual. Nor were such revisions reflected in the minutes of the December 10, 2011 Board of Directors meeting. Accordingly, 2012 Required Corrective Action No. 5 shall remain open until such time as ALS submits a revised Accounting Policies and Procedures Manual to OCE.

6. Enter into a written, legally binding contract that clearly defines the financial services that it requires.

ALS' response to the DR included a copy of the contract negotiated between it and its Financial Administrator. Accordingly, 2012 Required Corrective Action No. 6 is closed.

Introduction:

The Legal Services Corporation's Office of Compliance and Enforcement (OCE) made a site visit to Anishinabe Legal Services (ALS) on July 18 - 21, 2011, as part of a Case Services Report/Case Management Systems Review. In a letter dated September 23, 2011, the OCE provided ALS with a copy of its DRAFT REPORT following the site visit. OCE asked ALS to respond to the DRAFT REPORT. ALS provides the following responses:

Finding 1

ALS RESPONSE: ALS is in agreement with Finding 1 and appreciates LSC's recommendations to close Required Corrective Action Numbers 1 and 2.

ALS' only response to Finding 1 is in regards to Footnote #4 on the bottom of Page 3, which references White Earth Case file No. 01-06-0309, and states "it could be an indication of the need for more active management review of ALS' open case files."

ALS would note that it has recently revisited and revised its management review system to ensure total compliance in every case file opened. ALS has instituted bi-annual open and closed case spot checks for every case handler's open cases (coded as either pending or accepted under ALS' Case Management System-CMS). Twice a year, the Supervising Attorney at ALS will review 10 open and 10 recently closed case files of every advocate (recently closed meaning cases closed within the past 12 months). These files will be randomly selected by the office manager. After close and detailed inspection of each selected case file, the Supervising Attorney will then follow up and meet with each case handler to discuss compliance with spot checks, and if necessary, will institute additional training. The supervising attorney will then report directly to the Executive Director with results, and if necessary, additional training either given or needed as a result of spot check results.

As the Supervising Attorney also handles a caseload, the Executive Director will perform the 10 open/10 recently closed case-file spot check on the Supervising Attorney.

While ALS compliance continues to improve due to increased efforts, training, and direct supervision, ALS recognizes the need for continued proactive management supervision and training. ALS will continue to review and revisit its efforts while working towards full compliance in every case.

Finding 2 (5 UPDATED RESPONSES)

a) On page four (4) of the Draft Report, LSC states, "First the [ALS' financial eligibility policy] fails to specify that in assessing the financial eligibility of an individual known to be a victim of domestic violence, ALS may consider only the income and assets of the applicant and may not consider any assets jointly held with the abuser."

ALS RESPONSE: ALS has revised their financial eligibility policies as a result of LSC’s recent site visit and subsequent draft report. The revised policies will be presented and are expected to be approved by the ALS board of directors at the next scheduled board meeting on December 10, 2011. **For this particular issue, ALS responds that this will be rectified by including this exception in ALS Policy 1611 C (within our financial eligibility policies, which cover ALS policies 1611A-1611C) for board approval in December. A copy of the revised and ratified financial eligibility policies will be provided to LSC upon request as soon as is practicable after ratification at ALS’ next board meeting in December 2011.**

UPDATED RESPONSE 1: This provision was added/inserted as 1611A E(3) and 1611A F(2)(d)

ALS would also like to note that while all staff at ALS has been aware of this exception and has followed it for several years in intake applications for assistance by victims of domestic violence, ALS recognizes that it must be included in ALS’ formal written financial eligibility policies and will be included and ratified by the end of 2011 through board approval and adoption of ALS policy 1611(c).

b) On page 5 of the Draft Report, LSC states, “an applicant’s ownership of liquid net assets is an appropriate consideration in determining the applicant’s *asset* eligibility, but it is not an appropriate consideration in determining the income eligibility of an applicant whose income exceeds ALS’ annual *income* ceiling.”

ALS Response: ALS Policy 1611A (financial eligibility policy) will be amended to remove consideration of liquid net assets in determining income eligibility; the amendment is expected to be ratified at ALS’ next Board of Directors meeting on December 10, 2011. **Specifically, ALS policy 1611A(E)(a) (“Determination of Eligibility” and “over the maximum income level”) will be amended to remove subsection (2), which previously read “liquid net assets.”**

UPDATED RESPONSE 2: 1611A(E)(1)(b), which previously contained consideration of assets in determining income waivers has been removed from policies. Additionally, 1611A(E)(3) has been moved to 1611(F)(1)(b) –asset ceiling section of eligibility policies.

c) On page 5 of the Draft Report, LSC addresses a subparagraph of ALS policies entitled “Means Tested Income.” LSC states that “this subparagraph is consistent with LSC regulations only to the extent that ALS revises the language to clarify that it is only applicable to applicant’s whose sole source of income is from a governmental program for low-income individuals or families, and only to the extent that ALS can demonstrate that its governing body has reviewed the income and asset standards of the government program and determined that such standards are consistent with ALS’s own income and asset ceilings.”

ALS RESPONSE: **ALS has revised its financial eligibility policies accordingly and will submit them for expected board approval in December 2011.** The Means Tested Eligibility

subparagraph noted by LSC in the Draft Report will be amended to clarify that this policy will only be relevant and applicable for applicants' whose *sole* source of income is from a government program or programs for low-income individuals or families, and will also clarify that *only* those particular governmental programs that have been previously reviewed and approved by ALS' governing board and listed in the revised policies (i.e. found by the board to be consistent with all ALS annual income and asset ceilings), can and will be considered.

UPDATED RESPONSE 3: This Paragraph has been changed accordingly, and updated in 1611A(F)(2)(a)

d) On Page 6 of the Draft Report, LSC addresses the provision in ALS' policies that read, "Federal trust property or tribal leased land will not be considered in determining eligibility, but the income from such property (rents, royalties, etc.) will be considered." The Draft Report notes that, "ALS is required to revise its financial eligibility policy accordingly."

ALS RESPONSE: **ALS has revised its financial eligibility policies accordingly and will submit them for expected board approval in December 2011.** This particular policy will be amended to state, "Federal trust property or tribal leased land will not be considered in determining eligibility, but any annual funds received from such property (rent, royalties, etc.) exceeding \$2000 will be considered as income. Per 45 CFR § 1611.2(h)(i), the first \$2000 received per year by individual Native Americans derived from income or interests in Indian trust income is not considered income."

UPDATED RESPONSE 4: This provision was edited accordingly in 1611A(E)(2)

e) On Page 6 of the Draft Report, LSC notes ALS' continued distinction between liquid and non-liquid assets in their financial eligibility guidelines.

ALS RESPONSE: ALS has revised their financial eligibility policies to eliminate any and all distinctions between liquid and non-liquid assets, and will submit them for expected board approval in December 2011. Following LSC's lead and recommendations, amended policies will instead focus on availability of assets and ease of converting asset(s) into cash.

UPDATED RESPONSE 5: 1611A(F) has been edited to remove distinctions between liquid and non-liquid assets.

f) On Pages 6-7 of the Draft Report, LSC notes two separate paragraphs/provisions in ALS policies that came from language in pre-2005 versions of Part 1611 that have subsequently been removed by LSC.

ALS Response: ALS has revised their policies to remove the two paragraphs noted in LSC's draft report on the bottom of page 6 (e.g. "Evidence of prior administrative or judicial determination that a person's present lack or income results from refusal or unwillingness...") and

the top of page 7 (e.g. “In determining to serve a client over the maximum income level, the program will....”).

Specifically, ALS financial eligibility policy 1611A (E) (d) (quoted in LSC’s Draft Report on the bottom of page 6, and referenced directly above) has been removed, along with ALS policy 1611 (E) (f) (quoted in LSC’s Draft Report on the top of page 7, and also referenced directly above); ALS expects the proposed change to receive board approval in December 2011.

UPDATED RESPONSE 5: 1611A(E)(4) and 1611A(E)(6) referenced above have been removed from revised policies.

Finding 3 (1 Updated Response)

a) On Page 8 of LSC’s Draft Report (3rd full paragraph down) it is stated that, “all persons interviewed demonstrated sufficient familiarity with ALS’s financial eligibility policy, but none were aware of the requirement to inquire regarding income prospects.”

ALS RESPONSE: ALS immediately changed its intake form to include inquiries about income prospects after being alerted to this requirement during LSC’s on-site visit. ALS has also worked with their case management system operators to include information on income prospects in our online case management system.

b) On Pages 8-9 of the Draft Report, LSC correctly identifies problems ALS had with their old “1611 form” and corresponding written policies in ALS financial Eligibility policy 1611A. As with income prospects, ALS was instructed about these issues during the LSC on-site visit this past summer. ALS immediately updated their 1611 form under instructions and advice given by LSC during this past site visit. **This revised 1611 form is attached to this response.**

Additionally, ALS policies have also been amended to reflect the changes, which are expected to be ratified by the ALS board in December 2011. The amended policies will be consistent with the requirements of 45 CFR § 1611.5(b), CSR Handbook (2008 Ed.), § 5.3., and ALS’ revised 1611 form.

UPDATED RESPONSE 6: ALS Policies 1611A(D) and (E) have been revised and updated to fully comport with requirements of 45 CFR § 1611

Finding 4

a) On Page 10 of the Draft Report, LSC notes “ALS is required to provide a citation to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies,” and “assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, *e.g.*, specialized vans, wheel chairs and the like”

ALS RESPONSE: The Internal Revenue Department has issued rulings in the past that exclude, for tax purposes, payments made to Indians by the U.S. government for lands illegally taken. The payments are intended to make the payee whole again and are not income. ALS will find the current IRS Code citation and provide that information to OCE of LSC.

Finding 5

ALS has no response except to thank LSC for noting improvements and agreeing to close Corrective Action Nos. 8, 9 and 11

Finding 6

ALS will continue to increase efforts and supervision, and fully expects continued improvement as we keep working towards our goal of 100% compliance on every case file opened at ALS.

As discussed more fully in our response to Finding #1, ALS will continue increasing direct supervision and training on and for all case-handlers at ALS, through bi-annual spot checks/case compliance reviews, and regular training sessions.

ALS sincerely appreciates LSC noting the improvements and ALS just wants to note that while we agree we have substantially improved these issues, there are more improvements to be made which we are working proactively on, and ALS will not be completely satisfied with our own efforts until we can reach and maintain 100% accuracy and compliance with all requirements under all grant conditions and ALS policies.

Finding 7

In Finding 7 and corresponding footnote 12, an exception was noted in the Draft Report in White Earth open File No. 01-11-07118 where ALS accepted a civil forfeiture case for a non-enrolled client.

ALS RESPONSE: At ALS, we view this particular case as a matter of client misrepresentation that not only misled us, but significantly, the prosecuting attorney/opposing counsel in the matter.

At intake, client had represented to both the ALS intake worker and assigned case-handler that he was an enrolled tribal member at White Earth. ALS only accepted the case because of Minnesota state court precedent forbidding State (i.e. non-Tribal government) forfeiture of an enrolled member's vehicle on the reservations of the vehicle owner's enrollment.

Client's case-handler at ALS promptly and properly asked that the client fax over a copy of his tribal enrollment card for verification. Client instead faxed over a White Earth "descendant card" that looked almost identical to a White Earth enrollment card.

When this faxed card copy was presented to the prosecuting attorney, he agreed to release the vehicle to ALS' client, because of client's representations that he was an enrolled tribal member, combined with viewing the fax copy of the descendant card that looked almost identical to an enrollment card.

The misrepresentation did not just mislead ALS. In fact, the prosecutor who released the car was very upset at the ALS case-handler for representing the client as a tribal member and presenting a descendent card as an enrollment card. He promptly let this concern go when we informed/reminded him that we were going by the exact same information he was given (client's representations of being a tribal member combined with presentation of what looked to be an enrollment card that we all sincerely believed to be an enrollment card at the time). ALS took this as a teachable moment, and has been very sensitive to, and cognizant of the need to closely study purported White Earth Enrollment Cards to ensure they are not in fact descendant cards.

Finding 8

ALS has no response except to again note the planned increase in direct supervision, case file spot-checks and follow-up training, and to thank LSC for agreeing to close Corrective Action No. 12.

Finding 9

ALS has no response except to note that we have upgraded our case management system and software, we are noting improvements with the new software, instituting increased supervision spot checks and training as discussed above, and are thankful to LSC for agreeing to close Corrective Action No. 13.

Finding 10

ALS has reviewed Finding #10 and is in complete agreement.

Finding 11

In Finding 11, LSC noted that ALS has revised its Accounting Manual in 2009, but it now needs to be updated.

ALS RESPONSE: ALS' Financial Administrator is preparing the required amendments to the Manual and the amendments will be presented to the board for approval at the December 10, 2011 meeting.

Finding 12

The personnel policies have been amended to reflect current financial practices at ALS. These amendments are expected to be approved by the ALS board in December 2011.

Finding 13

In Finding 13, LSC noted ALS has adequate segregation of duties and internal controls. However, it does not have a formal contract for its financial services and OCE noted several outstanding checks listed on the bank account reconciliations that were more than six (6) months old.

ALS RESPONSES: ALS and the Fiscal Administrator have negotiated a DRAFT contract for handling the financial services for ALS. The contract will be presented to the board for approval at the December 10, 2011 meeting.

The Financial Administrator will provide a response to LSC regarding the several outstanding checks that are more than six (6) months old. Upon receipt of that information, ALS will update the response herein.

ELIGIBILITY GUIDELINES
ALS Policy 1611A

A. PURPOSE

This policy is designed to ensure that Anishinabe Legal Services will determine client eligibility according to criteria which gives preference to the legal needs of those least able to obtain legal assistance and which affords sufficient latitude to consider local circumstances and program resource limitations, while also ensuring that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

B. DEFINITIONS

The definitions contained in Legal Services Corporation Regulation Part 1611.2 will apply to this policy.

C. MAXIMUM INCOME LEVEL

1. No person whose income exceeds the maximum annual income level, unless authorized by the exceptions established by this policy, will be considered eligible for legal assistance under the Legal Service Corporation Act. In addition, the person must reside on or near the White Earth, Leech Lake, or Red Lake reservations in Minnesota.

2. Taking into account relevant factors including: a) cost of living in the locality, b) the number of clients who can be served by the resources of this program, c) the population which would be eligible for assistance at or below alternative income levels, and d) the availability and cost of legal services provided by the private bar in the Anishinabe Legal Services service area; the maximum income level for persons to be eligible for legal assistance will be an amount not exceeding 125% of the official Federal Poverty Guidelines.

3. Appendix A of Part 1611(45 CFR 1611, LSC Poverty Guideline), as periodically revised by the Legal Services Corporation, sets forth the maximum annual income levels calculated at 125% of the official Federal Poverty Income Guideline.

D. AUTHORIZED EXCEPTIONS

1. ALS may determine an applicant whose income exceeds ALS' applicable

annual income ceiling to be financially eligible if the applicant's assets do not exceed ALS' applicable asset ceiling established pursuant to *Subdivision (F)* below, or the asset ceiling has been waived pursuant to *Subdivision (F)(2)* below , and:

- a. The applicant is seeking legal assistance to maintain benefits provided by a government program for low income individuals or families; or
- b. The Executive Director has determined on the basis of documentation received by the applicant, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service;

2. A person whose income exceeds the maximum level established by this policy, but whose income does not exceed 200% of the national eligibility level, may be provided legal assistance if:

- a. The applicant is seeking legal assistance to obtain governmental benefits for low income individuals and families,
- b. The applicant is seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities; or
- c. The person's circumstances require that eligibility be found on the basis of one or more of the factors set forth in *Subdivision E* below;

E. DETERMINATION OF ELIGIBILITY

1. In determining whether assistance may be provided to an applicant over the maximum income level but whose income does not exceed 200% of the national eligibility level, ALS will consider the following factors:

- a. current income prospects, taking into account seasonal variations in income;
- b. Unreimbursed medical expenses and medical insurance premiums
- c. fixed debts and obligations

- d. expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
- e. non-medical expenses associated with age or disability;
- f. current taxes; or
- g. Other significant factors relating to a financial inability to afford legal assistance

2. Federal trust property or tribal leased land will not be considered in determining eligibility, but any annual funds from such property (rents, royalties, etc.) exceeding \$2000 will be considered as income. Per CFR 1611.2(h)(i), the first \$2000 received per year by individual Native Americans derived from income on interests in Indian trust income is not considered income.

3. In assessing the financial eligibility of an individual known to be a victim of domestic abuse, ALS may consider only the income and assets of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence, and may not consider the alleged domestic abuse perpetrator's income, or assets jointly held between the alleged perpetrator and applicant, or alleged perpetrator and other members of applicants household.

4. Legal assistance may be provided to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under this policy and provides information showing it lacks, and has no practical means of obtaining, funding to retain private counsel.

5. For any and all authorized exceptions made under *Subdivisions D or E* above, documentation of the exception (or exceptions) and reasons for serving such clients must be contained within the client's file, and if applicable, additional records necessary to inform LSC of the specific facts and factors relied on to make the determination will be kept by ALS within the client's file.

F. ASSET CEILING

1. Asset Ceiling

- a. Assets to be considered will include both liquid and non-liquid assets of all persons who are resident members of the family until, but will exclude the principal residence of the client.
- b. An applicant within the income guidelines may be deemed ineligible if he/she owns substantial property and/or other assets which could reasonably finance private services and which are in excess of the asset ceiling set forth below in *F(1)(c)*.
- c. The maximum value of such assets owned by and available to persons applying for assistance shall not exceed a monetary value in excess of \$40,000, unless a prospective client can meet one or more proper exceptions contained elsewhere within ALS eligibility guidelines (*ALS Policies 1611A and 1611B.*)
- d. While determining whether any exceptions are present and applicable under *F(2)* below, ALS will consider the availability of each particular asset and the ease and practicality for the prospective client to convert each and every asset into cash.

2. Asset Exceptions

- a. “Means tested” eligibility: If a person has been determined eligible to receive assistance from the following means tested poverty assistance programs, which contain income standards at or below 125% FPG, asset ceilings consistent with ALS policies and otherwise meet all ALS asset and income eligibility requirements, such as General Assistance (GA), the Minnesota Family Investment Program(MFIP), Medical Assistance (MA), Food Stamps, and Social Security Programs such as SSI and OASDI, and that person’s sole source of income is from one or more of those programs specifically named above, that individual is deemed to have met the income and asset eligibility requirements for case acceptance under Anishinabe Legal Services eligibility guidelines.

- b. A person whose total assets exceed the maximum level as set forth in ALS Policy 1611A, *F(1)(c)* above, may be provided legal assistance if the person would be eligible for assistance but for the inclusion of the value of the following assets:
- 1) One automobile per adult in the household;
 - 2) Trust property which is inaccessible to the client;
 - 3) Cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies and culture(**either provide legal authority or delete this exception**);
 - 4) Assets which are not immediately available to the person because of the nature of the matter for which legal assistance is sought (i.e. domestic abuse);
 - 5) Assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized, or handicapped persons who are members of a family unit (i.e. Specialized vans, wheelchairs, and the like)
- c. Waiver: In all cases in which a person is determined to be eligible for legal assistance based upon the provisions in this policy concerning income but whose assets, after considering applicable exceptions, are above the asset limit, the Executive Director may waive the asset limit, if s/he finds that the applicant has an unusual or extremely meritorious situation and it is unlikely that the matter would be handled by a private attorney in the service area. Any such waiver by the project director will be in writing and the factual basis for such determination will be documented and included in the client's file.
- d. In determining assets for an applicant known to be a victim of domestic violence, neither assets held jointly between the applicant and the alleged perpetrator, nor assets held jointly between members of the applicant's household and the alleged perpetrator will be considered (*also see 1611A(E)(3)*).

3. Documentation of Exceptions to Asset Ceiling Required: For any and all authorized exceptions made under *Subdivision F* above, documentation of the exception (or exceptions) and reasons for serving such clients must be contained within the client's file, and if applicable, additional records necessary to inform LSC of the specific facts and factors relied on to make the determination will be kept by ALS within the client's file (*see also ALS Policy 1611A E(5) above* containing an identical requirement for any and all income waivers)

G. MANNER OF DETERMINING ELIGIBILITY

1. Eligibility will be initially determined by the intake worker through informal questioning of the person seeking legal assistance, utilizing the client intake sheet, in a manner that promotes the development of trust between attorney and client. Where questions arise, final determination of eligibility will be made by the Executive Director in accordance with the program's Client Grievance Procedure and Legal Services Corporation Regulation Part 1621.

2. If there is substantial reason to doubt the accuracy of the information, appropriate inquiries will be made to verify it in a manner consistent with an attorney-client relationship.

3. Information furnished by a client to establish financial eligibility will not be disclosed to a person who is not employed by the program in a manner that permits identification of the client, without express written consent of the client, except that the program may provide such information to the Legal Services Corporation when:

- a. The Corporation is investigating allegations that question the financial eligibility of the previously identified client and the program's representation thereof;
- b. the information sought by the Corporation relates solely to the financial eligibility of that particular client;
- c. The information sought by the Corporation is necessary to confirm or deny a specific allegation relating to that particular client's financial eligibility and the program's representation thereof;

- d. The specific information sought by the corporation is not protected by the attorney-client privilege. In all cases in which information is provided to the Corporation as provided herein, the applicant will be notified that the program is required to provide to the Corporation the information sought.

4. If an eligible client becomes ineligible through a change in circumstances after a case has been accepted, ALS will discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford legal assistance, provided that discontinuation is not inconsistent with the attorney's professional responsibilities.

H. RETAINER AGREEMENT

A written retainer agreement, in a form approved by the Legal Services Corporation, will be prepared by the program and signed by each client receiving services. The agreement will be executed when representation commences (or, if not possible owing to an emergency situation, as soon thereafter as practicable), and will clearly identify the relationship between the client and recipient, the manner in which representation is sought, the nature of legal services to be provided, and the rights and responsibilities of the client. The program will retain the executed retainer agreement as part of the client's file and will make the agreement available for review by the LSC in a manner which protects the identity of the client.

A retainer agreement will not be required when the only service to be provided by the program to a client is brief advice and consultation.

I. REVIEW AND APPLICATION

The eligibility guidelines will be reviewed by ALS and appropriate adjustments made at least once each year. The Executive Director will insure that all staff members are familiar with these eligibility guidelines and are able to properly complete the client intake sheet.

Introduction:

The Legal Services Corporation's Office of Compliance and Enforcement (OCE) made a site visit to Anishinabe Legal Services (ALS) on July 18 - 21, 2011, as part of a Case Services Report/Case Management Systems Review. In a letter dated September 23, 2011, the OCE provided ALS with a copy of its DRAFT REPORT following the site visit. OCE asked ALS to respond to the DRAFT REPORT. ALS provides the following responses:

Finding 1

ALS RESPONSE: ALS is in agreement with Finding 1 and appreciates LSC's recommendations to close Required Corrective Action Numbers 1 and 2.

ALS' only response to Finding 1 is in regards to Footnote #4 on the bottom of Page 3, which references White Earth Case file No. 01-06-0309, and states "it could be an indication of the need for more active management review of ALS' open case files."

ALS would note that it has recently revisited and revised its management review system to ensure total compliance in every case file opened. ALS has instituted bi-annual open and closed case spot checks for every case handler's open cases (coded as either pending or accepted under ALS' Case Management System-CMS). Twice a year, the Supervising Attorney at ALS will review 10 open and 10 recently closed case files of every advocate (recently closed meaning cases closed within the past 12 months). These files will be randomly selected by the office manager. After close and detailed inspection of each selected case file, the Supervising Attorney will then follow up and meet with each case handler to discuss compliance with spot checks, and if necessary, will institute additional training. The supervising attorney will then report directly to the Executive Director with results, and if necessary, additional training either given or needed as a result of spot check results.

As the Supervising Attorney also handles a caseload, the Executive Director will perform the 10 open/10 recently closed case-file spot check on the Supervising Attorney.

While ALS compliance continues to improve due to increased efforts, training, and direct supervision, ALS recognizes the need for continued proactive management supervision and training. ALS will continue to review and revisit its efforts while working towards full compliance in every case.

Finding 2

a) On page four (4) of the Draft Report, LSC states, "First the [ALS' financial eligibility policy] fails to specify that in assessing the financial eligibility of an individual known to be a victim of

domestic violence, ALS may consider only the income and assets of the applicant and may not consider any assets jointly held with the abuser.”

ALS RESPONSE: ALS has revised their financial eligibility policies as a result of LSC’s recent site visit and subsequent draft report. The revised policies will be presented and are expected to be approved by the ALS board of directors at the next scheduled board meeting on December 10, 2011. For this particular issue, ALS responds that this will be rectified by including this exception in ALS Policy 1611 C (within our financial eligibility policies, which cover ALS policies 1611A-1611C) for board approval in December. A copy of the revised and ratified financial eligibility policies will be provided to LSC upon request as soon as is practicable after ratification at ALS’ next board meeting in December 2011.

ALS would also like to note that while all staff at ALS has been aware of this exception and has followed it for several years in intake applications for assistance by victims of domestic violence, ALS recognizes that it must be included in ALS’ formal written financial eligibility policies and will be included and ratified by the end of 2011 through board approval and adoption of ALS policy 1611(c).

b) On page 5 of the Draft Report, LSC states, “an applicant’s ownership of liquid net assets is an appropriate consideration in determining the applicant’s *asset* eligibility, but it is not an appropriate consideration in determining the income eligibility of an applicant whose income exceeds ALS’ annual *income* ceiling.”

ALS Response: ALS Policy 1611A (financial eligibility policy) will be amended to remove consideration of liquid net assets in determining income eligibility; the amendment is expected to be ratified at ALS’ next Board of Directors meeting on December 10, 2011. Specifically, ALS policy 1611A(E)(a) (“Determination of Eligibility” and “over the maximum income level”) will be amended to remove subsection (2), which previously read “liquid net assets.”

c) On page 5 of the Draft Report, LSC addresses a subparagraph of ALS policies entitled “Means Tested Income.” LSC states that “this subparagraph is consistent with LSC regulations only to the extent that ALS revises the language to clarify that it is only applicable to applicant’s whose sole source of income is from a governmental program for low-income individuals or families, and only to the extent that ALS can demonstrate that its governing body has reviewed the income and asset standards of the government program and determined that such standards are consistent with ALS’s own income and asset ceilings.”

ALS RESPONSE: ALS has revised its financial eligibility policies accordingly and will submit them for expected board approval in December 2011. The Means Tested Eligibility subparagraph noted by LSC in the Draft Report will be amended to clarify that this policy will only be relevant and applicable for applicants’ whose *sole* source of income is from a government program or

programs for low-income individuals or families, and will also clarify that *only* those particular governmental programs that have been previously reviewed and approved by ALS' governing board and listed in the revised policies (i.e. found by the board to be consistent with all ALS annual income and asset ceilings), can and will be considered.

d) On Page 6 of the Draft Report, LSC addresses the provision in ALS' policies that read, "Federal trust property or tribal leased land will not be considered in determining eligibility, but the income from such property (rents, royalties, etc.) will be considered." The Draft Report notes that, "ALS is required to revise its financial eligibility policy accordingly."

ALS RESPONSE: ALS has revised its financial eligibility policies accordingly and will submit them for expected board approval in December 2011. This particular policy will be amended to state, "Federal trust property or tribal leased land will not be considered in determining eligibility, but any annual funds received from such property (rent, royalties, etc.) exceeding \$2000 will be considered as income. Per 45 CFR § 1611.2(h)(i), the first \$2000 received per year by individual Native Americans derived from income or interests in Indian trust income is not considered income."

e) On Page 6 of the Draft Report, LSC notes ALS' continued distinction between liquid and non-liquid assets in their financial eligibility guidelines.

ALS RESPONSE: ALS has revised their financial eligibility policies to eliminate any and all distinctions between liquid and non-liquid assets, and will submit them for expected board approval in December 2011. Following LSC's lead and recommendations, amended policies will instead focus on availability of assets and ease of converting asset(s) into cash.

f) On Pages 6-7 of the Draft Report, LSC notes two separate paragraphs/provisions in ALS policies that came from language in pre-2005 versions of Part 1611 that have subsequently been removed by LSC.

ALS Response: ALS has revised their policies to remove the two paragraphs noted in LSC's draft report on the bottom of page 6 (e.g. "Evidence of prior administrative or judicial determination that a person's present lack or income results from refusal or unwillingness...") and the top of page 7 (e.g. "In determining to serve a client over the maximum income level, the program will...").

Specifically, ALS financial eligibility policy 1611A (E) (d) (quoted in LSC's Draft Report on the bottom of page 6, and referenced directly above) has been removed, along with ALS policy 1611 (E) (f) (quoted in LSC's Draft Report on the top of page 7, and also referenced directly above); ALS expects the proposed change to receive board approval in December 2011.

Finding 3

a) On Page 8 of LSC's Draft Report (3rd full paragraph down) it is stated that, "all persons interviewed demonstrated sufficient familiarity with ALS's financial eligibility policy, but none were aware of the requirement to inquire regarding income prospects."

ALS RESPONSE: ALS immediately changed its intake form to include inquiries about income prospects after being alerted to this requirement during LSC's on-site visit. ALS has also worked with their case management system operators to include information on income prospects in our online case management system.

b) On Pages 8-9 of the Draft Report, LSC correctly identifies problems ALS had with their old "1611 form" and corresponding written policies in ALS financial Eligibility policy 1611A. As with income prospects, ALS was instructed about these issues during the LSC on-site visit this past summer. ALS immediately updated their 1611 form under instructions and advice given by LSC during this past site visit. **This revised 1611 form is attached to this response.** Additionally, ALS policies have also been amended to reflect the changes, which are expected to be ratified by the ALS board in December 2011. The amended policies will be consistent with the requirements of 45 CFR § 1611.5(b), CSR Handbook (2008 Ed.), § 5.3., and ALS' revised 1611 form.

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a) On Page 10 of the Draft Report, LSC notes "ALS is required to provide a citation to the federal or state law exempting cultural articles, traditional seasonal items such as ricing boats and other personal property necessary for and incidental to traditional Indian ceremonies," and "assets which would otherwise be available and used for the care and treatment of the elderly, institutionalized or handicapped persons who are members of a family unit, *e.g.*, specialized vans, wheel chairs and the like"

ALS RESPONSE: The Internal Revenue Department has issued rulings in the past that exclude, for tax purposes, payments made to Indians by the U.S. government for lands illegally taken. The payments are intended to make the payee whole again and are not income. ALS will find the current IRS Code citation and provide that information to OCE of LSC.

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ALS will continue to increase efforts and supervision, and fully expects continued improvement as we keep working towards our goal of 100% compliance on every case file opened at ALS.

As discussed more fully in our response to Finding #1, ALS will continue increasing direct supervision and training on and for all case-handlers at ALS, through bi-annual spot checks/case compliance reviews, and regular training sessions.

ALS sincerely appreciates LSC noting the improvements and ALS just wants to note that while we agree we have substantially improved these issues, there are more improvements to be made which we are working proactively on, and ALS will not be completely satisfied with our own efforts until we can reach and maintain 100% accuracy and compliance with all requirements under all grant conditions and ALS policies.

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ALS RESPONSE: At ALS, we view this particular case as a matter of client misrepresentation that not only mislead us, but significantly, the prosecuting attorney/opposing counsel in the matter.

At intake, client had represented to both the ALS intake worker and assigned case-handler that he was an enrolled tribal member at White Earth. ALS only accepted the case because of Minnesota state court precedent forbidding State (i.e. non-Tribal government) forfeiture of an enrolled member's vehicle on the reservations of the vehicle owner's enrollment.

Client's case-handler at ALS promptly and properly asked that the client fax over a copy of his tribal enrollment card for verification. Client instead faxed over a White Earth "descendant card" that looked almost identical to a White Earth enrollment card.

When this faxed card copy was presented to the prosecuting attorney, he agreed to release the vehicle to ALS' client, because of client's representations that he was an enrolled tribal member, combined with viewing the fax copy of the descendant card that looked almost identical to an enrollment card.

The misrepresentation did not just mislead ALS. In fact, the prosecutor who released the car was very upset at the ALS case-handler for representing the client as a tribal member and presenting a descendant card as an enrollment card. He promptly let this concern go when we informed/reminded him that we were going by the exact same information he was given

(client's representations of being a tribal member combined with presentation of what looked to be an enrollment card that we all sincerely believed to be an enrollment card at the time). ALS took this as a teachable moment, and has been very sensitive to, and cognizant of the need to closely study purported White Earth Enrollment Cards to ensure they are not in fact descendant cards.

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ALS RESPONSE: ALS' Financial Administrator is preparing the required amendments to the Manual and the amendments will be presented to the board for approval at the December 10, 2011 meeting.

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In Finding 13, LSC noted ALS has adequate segregation of duties and internal controls. However, it does not have a formal contract for its financial services and OCE noted several outstanding checks listed on the bank account reconciliations that were more than six (6) months old.

ALS RESPONSES: ALS and the Fiscal Administrator have negotiated a DRAFT contract for handling the financial services for ALS. The contract will be presented to the board for approval at the December 10, 2011 meeting.

The Financial Administrator will provide a response to LSC regarding the several outstanding checks that are more than six (6) months old. Upon receipt of that information, ALS will update the response herein.