



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

North Penn Legal Services, Inc.

July 13 - 17, 2009
Follow-Up Review

Recipient No. 339070

I. EXECUTIVE SUMMARY

Finding 1: Of the 24 corrective actions of the 2007 Final Report, 10 were fully implemented, nine (9) were not implemented, one (1) was partially implemented, and (four) 4 are moot.

Finding 2: NPLS' use of its automated case management system ("CMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and recorded. As such, Corrective Action 17 of the 2007 Final Report has been fully implemented. However, due to the program's continued inability to run accurate case lists, Corrective Action 18 of the 2007 Final Report has not been implemented.

Finding 3: Case review, staff interviews, and review of program documents evidenced that NPLS' intake procedures do not support the program's compliance-related requirements. As such, Corrective Action 1 of the 2007 Final Report has not been implemented. In reference to regularly scheduled compliance training, Corrective Action 19 of the 2007 Final Report has been fully implemented.

Finding 4: Case review revealed that NPLS is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. NPLS has partially implemented Corrective Action 3 of the 2007 Final Report but requires continued improvement in reference to issues regarding consistent intake screening of income and over-income case acceptance.

Finding 5: Case review demonstrated that NPLS is in compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, NPLS has not implemented Corrective Action 4 of the 2007 Final Report related to consistent asset eligibility screening.

Finding 6: NPLS is out of compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). As such, the program has not implemented Corrective Actions 6 and 8 of the 2007 Final Report.

Finding 7: NPLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9. As such, NPLS has fully implemented Corrective Action 14 of the 2007 Final Report.

Finding 8: NPLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts) as client statement of facts were present in files in which they were required. As such, Corrective Action 15 of the 2007 Final Report has been fully implemented.

Finding 9: NPLS is in compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 10: Case review evidenced that NPLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). As such, NPLS has fully implemented Corrective Action 9 of the 2007 Final Report. However, the program is required to more stringently enforce its supervision of paralegal work.

Finding 11: NPLS application of the CSR case closure categories requires significant improvement in order to be fully consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). As such, NPLS has not implemented Corrective Action 10 of the 2007 Final Report.

Finding 12: NPLS is in substantial compliance with the timely case closure requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. As such, it has fully implemented Corrective Actions 11 and 13 of the 2007 Final Report.

Finding 13: Case review evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. As such, NPLS has fully implemented Corrective Action 16 of the 2007 Final Report.

Finding 14: Corrective Actions 2, 5, 7, and 12 of the 2007 Final Report involved a review of closed 2006 and pending cases for various compliance issues. As closed 2006 cases were not included in the instant Follow-Up Review, a comprehensive finding as to whether these corrective actions were fully implemented cannot be made. However, NPLS must provide an update regarding the status of any pending cases opened under its prior intake system.

Finding 15: Case review, staff interviews, and limited document review evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 16: Case review evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 17: A limited review of NPLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

Finding 18: NPLS is in non-compliance with the requirements of 45 CFR Part 1614 (Private attorney involvement) due to its lack of reliable oversight of PAI case activities. In addition, review of financial documents and staff interviews evidenced inconsistent accounting of PAI-related activities. As such, NPLS has not implemented Corrective Actions 20, 21, and 23 of the 2007 Final Report. The program has implemented Corrective Actions 22 and 24 of the 2007 Final Report.

Finding 19: Limited document review evidenced that NPLS is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or non-profit organization.

Finding 20: Staff interviews and limited document review evidenced that the program is not in compliance with 45 CFR Part 1635 (Timekeeping requirements).

Finding 21: NPLS is in compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Finding 22: A limited review of the program's internal controls evidenced adequate segregation of duties, internal controls, and defined procedures. However, some improvements are recommended.

Finding 23: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 24: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

Finding 25: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 26: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 27: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 28: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 29: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 30: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 31: Case review evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

II. BACKGROUND OF REVIEW

From July 13-17, 2009, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Follow-Up Review ("FUR") on-site visit to North Penn Legal Services, Inc. ("NPLS"). OCE performed an on-site Case Service Report/Case Management System ("CSR/CMS") review of NPLS in March 2005 and a Final Report was issued to the program in 2007 ("2007 Final Report"). Due to the number of corrective actions noted in the 2007 Final Report, LSC conducted a compliance training session in June 2005. The purpose of the July 2009 FUR was to assess the program's compliance with the LSC Act, regulations, and other applicable laws and its implementation of the corrective actions of the 2007 Final Report. The visit was conducted by a team of eight attorneys and one fiscal analyst. Four of the attorneys and the fiscal analyst were OCE staff members; the remaining attorneys on the team were LSC consultants.

The 2009 on-site FUR review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements, the CSR Handbook (2008 Ed.), and to ensure that NPLS had fully implemented the 24 corrective actions of the 2007 Final Report. Specifically, the review team assessed NPLS for compliance with regulatory requirements 45 CFR Part 1611 (Financial Eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of NPLS' upper and middle management, staff attorneys and support staff. NPLS' case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2007 through May 31, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 900 case files which included 297 targeted files.

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

NPLS is an LSC recipient with 13 field offices located in Scranton, Bethlehem, Williamsport, Towanda, Honesdale, Tunkhannock, Jim Thorpe, Hazelton, Bloomsburg, Wilkes-Barre, Stroudsburg, Sunbury, and Mansfield, PA. The program is one of 8 LSC-funded recipients in the state of Pennsylvania.

In 2007, NPLS reported 7,676 closed cases in its CSR data. NPLS' 2007 Self-Inspection report indicated a 1.4 % error rate with exceptions noted found in 3 out of 203 files reviewed. In 2008, NPLS reported 7,708 closed cases in its CSR data. NPLS' Self-Inspection report evidenced a 2.5% error rate with exceptions noted in 5 out of 202 files reviewed. Exceptions included 1 case involving a non-telephone case lacking a citizenship attestation or documentation of alien eligibility, 3 cases in which there was no written evidence of advice or representation, and 1 extended service case in which assistance was completed and case closure occurred prior to 2008. In 2008, 61.2% of its representation was for limited service cases, and 38.8% for extended service cases. Its three primary areas of representation were Family (84.5%), Consumer Finance (6.4%), and Income Maintenance (6.4%). NPLS' 2009 LSC funding consists of a \$1,741,876 Basic Field Grant.

By letter dated May 11, 2009, OCE requested that NPLS provide a list of all cases reported to LSC in its 2007 CSR data submission ("closed 2007 cases"), its 2008 CSR data submission ("closed 2008 cases"), a list of all cases closed between January 1, 2009 and May 31, 2009 ("closed 2009 cases"), and a list of all cases which remained open as of May 31, 2009 ("open cases"). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. In addition, OCE requested that NPLS prepare two sets of each list - one for cases handled by NPLS staff and the other for cases handled through NPLS' PAI component. NPLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10 and 11, and the LSC Access to Records (January 5, 2004) protocol. NPLS was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter a representative sample of cases was created for review during the on-site visit. The sample was created proportionately among 2007, 2008, 2009 closed cases and open cases, as well as a proportionate distribution of cases from NPLS' field offices. The sample consisted largely of randomly selected cases, but, as noted above, also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and NPLS agreement of July 6, 2009, NPLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered.² Nine of the program's 13 field offices were visited. Staff members

² In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

from the field offices that were not visited were interviewed via telephone and a sample of cases from those field offices were reviewed. NPLS' management and staff cooperated fully in the course of the review process. As discussed in more detail below, NPLS was made aware of certain compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as NPLS management.

At the conclusion of the visit on July 17, 2009, OCE conducted an exit conference during which NPLS was made aware of any preliminary areas in which a pattern of non-compliance was found. No distinction in compliance between 2007, 2008, and 2009 cases was noted. NPLS was advised that they would receive a Draft Report that would include all of OCE's findings and they would have an opportunity to submit comments, after which a Final Report would be issued.

NPLS was provided a Draft Report ("DR") on October 13, 2009 and was given an opportunity to comment. NPLS' comments to the DR were received on December 2, 2009. The program's comments have been incorporated into this Final Report, where appropriate, and are affixed hereto as an exhibit.

III. FINDINGS

Finding 1: Of the 24 corrective actions of the 2007 Final Report, 10 were fully implemented, nine (9) were not implemented, one (1) was partially implemented, and four (4) are moot.

The 2009 FUR clearly evidenced that while the program has incorporated helpful technology and has improved certain systems substantially; its efforts have fallen short in reference to overall program implementation of the corrective actions of the 2007 Final Report.

In its comments to the Draft Report provided prior to the 2007 Final Report's release, NPLS articulated a number of efforts, planned or in process, to strengthen its compliance with LSC regulations and requirements. The program's efforts included use of one intake form throughout the program, a case closing compliance checklist, and regularly scheduled compliance trainings.

It is evident, however, that not all program field offices have embraced the efforts made since the prior CSR/CMS review to bring the entire program into compliance. Inconsistencies involving intake policies, procedures, and forms abound and certain previously identified compliance issues continue to be problematic. As noted in the findings below, NPLS management will be required to undertake additional efforts to fully implement any remaining corrective actions of the 2007 Final Report and any additional issues identified in the July 2009 on-site FUR.

In its comments to the instant DR, NPLS agreed to ensure that all outstanding Corrective Actions of the 2007 Final Report are fully implemented except for Corrective Actions 2, 5, 7, and 12 involving closed 2006 cases.

Finding 2: NPLS' use of its automated case management system ("CMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and recorded. As such, Corrective Action 17 of the 2007 Final Report has been fully implemented. However, due to the program's continued inability to run accurate case lists, Corrective Action 18 of the 2007 Final Report has not been implemented.

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

As a result of the many issues within the program regarding accurate CMS and file information during the 2003 CSR/CMS Final Report, Corrective Action 17 of the 2007 Final Report required the program to:

Instruct staff to reconcile information in the CMS if it conflicts with the data originally gathered at intake or at case closure.

Case review evidenced few errors in this regard; as such NPLS has fully implemented Corrective Action 17 of the 2007 Final Report. *See*, however, Case Nos. 410900708 and 310800355, open cases where the household number was listed as "0" in the file but there was clearly at least the client who would count as one household member; and 460900060, a closed 2009 case where the case advocate listed on the case list was a secretary.

Corrective Action 18 of the 2007 Final Report directed NPLS to:

Copy its CSR data into separate files so that it may be reproduced accurately in the future.

It was clear from case review, NPLS management interviews, and an analysis of the program's case lists that there continues to be concern regarding NPLS' ability to accurately report CSR statistics to LSC. A comparison of the number of cases reported in the 2007 and 2008 CSRs with the CSR lists prepared by the program for the on-site review showed a difference of 10 additional cases for the 2007 CSR lists and more than 300 additional cases for the 2008 CSR lists. As such, the program has not implemented Corrective Action 18 of the 2007 Final Report. NPLS was required to provide a memorandum regarding the inconsistencies in its CSR reports with its comments to the Draft Report. The memorandum was to clarify such differences in addition to explaining how NPLS would implement a mechanism by which to consistently and accurately reproduce future CSR data.

In addition, case review revealed significant questions as to how NPLS creates its non-LSC eligible case lists. Many cases on the program's non-LSC eligible lists were, in fact, eligible for LSC reporting purposes and were incorrectly present on non-LSC eligible lists. *See*, for example, Case No. 320900018, an open case which was incorrectly on the non-LSC eligible list, as the

case was documented fully as LSC-eligible.³ *See also*, for example, Case Nos. 550900426; 550800343; 450600665; 450800127; 430700303; 430800336; and 330900155.

It is unclear whether the program uses the designation of “non-LSC” as a deselection indicator for CSR reporting. Staff interviews evidenced confusion as to whether the box indicating “LSC eligibility”, when checked, would include a case for CSR reporting. It appears that this box, in some instances, remains checked for cases that were designated as non-LSC, which raises questions. Further, staff interviewed was unclear how the LSC eligibility box is used for CSR reporting, and was uncertain as to how NPLS indicates cases for deselection. As incorrect deselection results in the under-reporting of LSC-eligible case, it is recommended that NPLS investigate its methodology used to designate LSC-eligibility and make revisions, if necessary, to ensure accurate reporting of case statistics.

In its comments to the DR, NPLS strongly disagreed with the above finding regarding the program’s ability to run accurate CSRs. The program provided the requested memorandum regarding the differences between its reported CSR and the lists provided for the most recent on-site review. The memorandum, attached hereto as an exhibit, noted that the program did preserve its 2007 and 2008 CSR data in separate Excel spreadsheets which should satisfy Corrective Action 18 of the 2007 Final Report. In addition, NPLS noted that LSC’s request for lists included data fields not used by the program in running its CSRs (first name, date opened, and advocate) which required a new query to the CMS and may have resulted in the errors noted above. The program also asserted that the difference of over 300 cases between the 2008 CSR and the on-site lists were likely the result of “pasting cases from a single program listing” into separate lists for each office as requested by LSC and mistakenly over-writing 257 cases. NPLS stated that when questioned by LSC regarding the discrepancies prior to the on-site review, the program’s rationale and process was provided in a memorandum to LSC and no objection was raised to its method. In reference to the possibility of under-reporting cases, NPLS noted that it had been asked to provide a non-LSC funded list not a non-LSC eligible list and this was the reason some cases that appeared to be LSC-eligible were present on non-LSC funded case lists.

While NPLS’ effort in explaining its CSR methodology prior to and following the on-site review is appreciated, a concern regarding the program’s ability to re-create its reported CSRs remains. Corrective Action 18 of the 2007 Final Report was not satisfied as the program was unable to reproduce the CSR data “accurately in the future” despite having copied the data into separate files. In the course of its oversight responsibilities, LSC has made and reviewed identical case list requests of its grant recipients, including the Pennsylvania recipients which share the same type of case management software as NPLS, without the issues noted above. In an effort to ameliorate this issue, NPLS should run future CSRs using the fields and instructions noted in the May 11, 2009 on-site review letter as a guide.

In reference to the issue of under-reporting cases, NPLS has satisfied LSC’s concerns.

³ This case was checked as “LSC-eligible” in the CMS but appeared on the non-LSC eligible case list.

Finding 3: Case review, staff interviews, and review of program documents evidenced that NPLS' intake procedures do not support the program's compliance-related requirements. As such, Corrective Action 1 of the 2007 Final Report has not been implemented. In reference to regularly scheduled compliance training, Corrective Action 19 of the 2007 Final Report has been fully implemented.

Inconsistent intake policies, procedures, and forms were one of the most significant issues noted in the 2007 Final Report. As a result, Corrective Action 1 of the 2007 Final Report directed the program to:

Adopt, communicate, and enforce uniform intake screening procedures and forms in all program field offices. NPLS must articulate its specific plans to institute a standard method for intake screening in its field offices in its comments to this Draft Report.

Corrective Action 19 of the 2007 Final Report required the program to:

Establish regularly scheduled compliance training for all staff and create a comprehensive compliance training for new employees.

LSC requires consistent intake screening in order to ensure that LSC's eligibility requirements are met and applied fairly to all applicants regardless of which intake staff or field office performs intake screening. Interviews with staff and management, review of program documents, and case review in the majority of program field offices assisted in an assessment of NPLS' progress in improving its intake screening process to ensure consistent application of eligibility requirements. Despite a demonstrated effort to bring consistency to its intake screening policies, procedures, and forms since the time of the 2005 CSR/CMS review, the program has failed to implement Corrective Action 1 of the 2007 Final Report.

Inconsistencies in intake policies, procedures, and forms varied significantly throughout NPLS' field offices and, often, within the same field office. Although some field offices were clearly more compliant than others, from a program perspective, screening of applicants for income, assets, citizenship/alien eligibility, and conflicts continues to be inconsistently performed. In addition, staff descriptions of application of income and asset waivers and the definition of household were conflicting.

As a detailed description of the intake process of each NPLS field office would be unwieldy, examples of specific policies, procedures, or forms will be utilized to highlight certain areas that the program must address to fully implement consistent intake screening throughout the program. In brief, however, NPLS' efforts in providing training, creating uniform compliance documents including a standard intake form, and employing technology to provide up-to-date compliance information on its intranet site, Sharepoint, have foundered due to three primary issues: confusing communication of compliance directives, staff reluctance to adopt new compliance directives, and management oversight of individual field offices' success in implementing new compliance directives.

NPLS uses a hybrid intake system that includes both centralized telephone intake for certain field offices and individual field office intake which includes both telephone and in-person screening.⁴ Intake staff is required to attend weekly conference calls in which intake issues, including those related to compliance, are discussed. NPLS additionally provides income and other eligibility standards on its online intranet, Sharepoint, and communicates intake and other compliance directives via e-mail.

Forms

A review of the program's intake forms revealed that, despite a management directive to use a standard intake form, there were different intake forms provided in certain offices and they varied in terms of screening for various core eligibility items. In addition, many of these intake forms are not as detailed as the queries contained in NPLS' CMS regarding income and assets. Because some field offices rely solely on the CMS for intake while others use independently created intake forms, there is the appearance an applicant receives a different level of eligibility screening depending on which NPLS field office performs intake. Further, NPLS has no apparent policy regarding who fills out an application for services. In some offices, intake forms are filled out by the applicant and in other offices, the intake staff fills out the form to capture information that is later entered in the CMS. Depending on whether staff later reviews intake information with the client, the differing application procedures could also lead to inconsistencies in acceptance for services in different field offices.

Aside from the program-mandated standard intake form, a majority of the intake forms collected were outdated and/or insufficient for the level of detail necessary under the program's intake screening process as reflected in the CMS and by program policy. Surprisingly, in light of program directives, interviewed staff provided forms that were in use during the last OCE visit in 2005 which they had never stopped using. Such forms were inadequate then and are inadequate now. For example, certain intake forms reflect an asset screening test that does not match the current program assets levels. Other mistakes are present, such as requesting the "value of second car" even though the current LSC regulation requires the inclusion of the value of any car not used for transportation. In addition, certain intake forms failed to contain questions or data lines to screen non-citizens pursuant to 45 CFR Part 1626. For example, in one form there is only the question regarding citizenship. Staff using this intake form stated that if an applicant was not a citizen that staff may write notes in the column regarding alien eligibility. This raises a concern in field offices in which applicants are allowed to complete the forms by themselves.

In the NPLS field offices using the standard program form exclusively, intake screening was performed in a more standardized manner. However, there was strong resistance noted by staff in certain field offices regarding the adoption of one intake form and entering data into the CMS in the course of intake interviews. A quote from one interviewee regarding the use of the computerized intake form is telling. The staff member stated there are "so many other questions on computer that do not apply or are too lengthy" as the reason why they prefer to use various

⁴ NPLS provides legal information via clinics which is general in nature, involving general discussion and some videos presentations. According to staff and case review, these clinics do not result in individualized legal assistance requiring intake and, as such, are not addressed in this Finding.

abbreviated intake forms. Another justification stated by staff was the desire to have targeted and unique questions for clients depending on the area of substantive law. As seen from the practice of other LSC-funded programs, however, this argument is unconvincing because a program can adopt numerous unique, substantive law-specific supplemental forms. Basic regulatory screening should not vary by substantive area as is currently done in certain NPLS field offices. The use of such abbreviated, defective, and unauthorized intake forms should be ended immediately. NPLS management should ensure that all non-standard intake forms are discontinued and should adopt and enforce the use of one standard intake sheet that matches the CMS version and program eligibility policies.

Policies and procedures

In reference to consistency in the use of the program's intake policies and procedures, staff interviews and review of program documents revealed confusion regarding NPLS directives involving intake eligibility and screening.

For example, in the course of staff interviews, multiple definitions for "household" were provided. One intake worker explained the determination of "household" as involving the following rules: For children living with parents, if the child is 18 or older, they would not be included if they have a job. However, if an 18 or older child is in the home and still in school or not working they will be included. This intake worker added that children "around 23" or older would simply not be included no matter whether in school, working, or not. Another intake worker in a different office explained that those 18 and older are "typically not counted" in the household unless adding them would make the household eligible then they would be added so they can accept the client. Another staff member stated that "household" is determined by assessing the persons living together and whether they are financially responsible for each other. When there is a link of financial responsibility, the income, child support and other income of the additional persons will be considered towards income. When there is no link of financial responsibility, the other persons living in the household are not included. Answers regarding the definition of "household" differed between various field offices and even among intake staff in the same office.

An email from the "Intake/BriefSvcs" work group at NPLS to intake staff was provided by one staff member to help assist in the explanation of the handling of persons 18 or older. This email was addressing differences between NPLS guidelines and the TXX/AJA regulations but included instructions regarding certain LSC-funded cases. The email, dated April 9, 2009, provided the following guidelines:

1. When it is the 18-20 year old who is applying for services, do not include the parents and code the case as funding source 2 (LSC), component A.
2. When the application is by the parent, first ask for the 18-20 year old's monthly gross income. If it is \$390 or more, do not count them as HH members and code the case FS 2, component A. If the 18-20 yr old's income is under \$390/month, include them in the HH and code the case as FS 10. If HH ends up being at least \$390 under the income maximum, the component is L. If it's closer to the limit thnt [sic] \$390, component is M.

The variations evidenced during the review have the effect of applicants receiving unequal consideration of income/family unit depending on the person conducting intake or office visited. In particular, some field offices' intake is particularly troublesome, as staff noted that the family unit size definition is changed as needed so as to maximize the number of persons who can qualify for assistance. Based on the information above, this is an unreliable system with changing results for similarly-situated applicants depending on the field office or intake worker who handles their application. NPLS must implement and provide training regarding a uniform definition of household to be applied to LSC-eligible cases.

In its comments to the DR, NPLS indicated that it does not have different definitions of "household" but rather a definition of "household" for LSC-eligible cases and a definition for "family" for eligibility under other funding sources. According to the program, the two definitions are almost identical except for treatment of eligibility for 18-20 year olds. NPLS noted that in such cases, staff is directed to apply either the "household" or the "family" definition according to which best serves the goal of qualifying the applicant for services. In its comments to the DR, NPLS agreed to clarify the issue of household definition in its follow-up training.

Another example involves NPLS' policy regarding procedures to obtain waivers in over-income and/or over-assets cases. While the program's over-income exception policy and procedures are greatly improved since the time of the 2005 visit, staff interviews evidenced some inconsistency and confusion regarding application of NPLS income and asset waiver procedures. NPLS policy states that the Executive Director has the authority to waive income when an applicant's income is at or below 187.5% of the Federal Poverty Guidelines ("FPG") and factors affect the applicant's income or when the applicant has medical or nursing home expenses. However, interviews revealed that some NPLS staff members do not request waivers unless an applicant's income is over 187.5%. According to NPLS management, intake staff has the authority to accept over-income applicants as long as they have conducted a spend-down which reduces the applicant's income below 125%. The same confusion and inconsistency was evidenced in reference to the NPLS' over-asset waiver policy and practice. The varied answers received in staff interviews regarding over-income and over-asset waiver policies again create a scenario in which applicants receive different intake screening and case acceptance procedures depending on which program field office performs intake. NPLS must revise its policies to coincide with current procedures or provide training regarding its over-income case acceptance and over-income and over-asset waiver policies.

In its comments to the DR, the program indicated that the "over-income situations requiring a waiver are very limited" and that such "situations are regularly reviewed to determine that a waiver has been obtained." While the program noted that proper handling of over-income applicants is the subject of periodic training, NPLS stated that it had no objection to including review of over-income and over-asset case acceptance policies and procedures in "future training plans."

In reference to over-asset waivers, NPLS noted in its comments to the DR that it had recently changed its policy on over-asset waivers. According to NPLS, its prior policy had met with

objections by state funders who were concerned with a waiver process which could result in disqualification of an applicant on the basis of excess assets when the applicant could be served with state funds that had no asset test. The policy was then revised so that applicants with assets exceeding LSC limits will be assigned to non-LSC funding sources and marked as non-LSC eligible. NPLS indicated in its comments to the DR that any staff confusion regarding this issue “is not surprising” because the policy was relatively new at the time of the on-site review.

In reference to case closing procedures, staff is required to complete a compliance checklist form which records basic LSC regulatory requirements, such as retainer, citizenship attestation, etc. and Pennsylvania Title XX requirements prior to closing cases. Case review and staff interviews revealed that field offices are utilizing different closing forms or not using required closing forms at all.

As noted above, the inconsistency in intake screening (and other compliance-related issues) may be traced to three primary issues: confusing communication of compliance directives, staff reluctance to adopt new compliance directives, and management oversight of individual field offices’ success in implementing new compliance directives. It is significant to note that many interviewed intake staff participate in program-wide weekly telephone conferences of intake staff, required by management, in which updates and trends are discussed. Despite all of the systems and meetings, however, multiple intake forms, procedures, and definitions are in use throughout the program. It appears that the procedures and methods used by NPLS to date have not been entirely effective at bringing about needed clarity, standardization, or efficiencies. Without a more effective communication process, improved implementation of compliance directives, and an oversight and enforcement process, NPLS will continue to have compliance issues related to intake.

In order to ameliorate the issues regarding inconsistent intake, the program is required to revisit its standard intake policies, procedures, and forms to ensure they comport with all intake-related findings contained within the instant Final Report and provide additional training(s) for all staff, not simply intake staff, regarding NPLS’ standard intake policies, procedures, and forms no later than 4 months following receipt of LSC’s Final Report. One month after any revisions to, and training on, the program’s standard intake policy, procedures, and forms is completed, the program should provide OCE with a memorandum detailing any revisions to NPLS’ standard intake policies, procedures, and forms and including copies of signed staff attendance sheets from the training(s). The program must also provide a plan detailing what specific and periodic oversight executive management will undertake to ensure that intake staff and managing attorneys and implement properly understand the program’s standard intake policies, procedures, and forms. The plan must include a preliminary schedule of physical visits to all field offices by NPLS executive management to ensure compliance with program directives regarding its standard intake protocol.

In its comments to the DR, NPLS requested that the LSC’s original deadline of 2 months to complete any follow-up training required by the instant Final Report be extended to 6 months due to the size of the program’s staff, its wide geography, and the number of compliance issues to be addressed. LSC extends the deadline for which follow-up training is to be completed to 4 months from the date of the instant Final Report. In short, the program has 4 months from receipt

of the instant Final Report to revise its standard intake policies, procedures, and forms and provide training, and one month following the training to prepare and submit the above-described memorandum to LSC.

NPLS additionally noted in its comments to the DR that the program took exception to providing signed attendance sheets from its required training regarding intake policies, procedures, and forms. The requirement of providing signed attendance sheets is not a unique requirement for NPLS and has been used previously and without issue in the case of programs in which continuing compliance issues are identified in a Follow-Up Review. The requirement provides documentation that the training has been attended by required staff. In addition, as the majority of programs use signed attendance sheets to document employee attendance at trainings, it is not particularly burdensome. As such, LSC reiterates its request that NPLS attach signed attendance sheets with its required memorandum.

In reference to the regularly scheduled compliance training required by Corrective Action 19, NPLS staff indicated that compliance trainings were held at least once a year on an all-staff basis. In addition, program staff noted that Employee Council meetings, which are held every other month and include staff from managing attorneys to support staff, include topics involving compliance. The program's intranet site, Sharepoint, provides up-to-date compliance information to all staff. NPLS management also noted that all new employees were provided with compliance training as a part of their new employee orientation. As such, Corrective Action 19 of the 2007 Final Report has been fully implemented.

An additional intake-related issue noted in the course of the review involves screening pursuant to an aging grant. As the grant does not have income and asset restrictions/guidelines, some clients are not screened and their cases are not to be reported to LSC. When the clients are not screened, a zero is entered in the asset and income fields and the non-LSC box is checked. As a result, the applicants appear to be LSC-eligible but their cases are not reported to LSC. It is recommended that NPLS should make a distinction in the CMS as to when an applicant is screened and their income is actually zero and when an applicant is not screened due to other funding without financial eligibility restrictions and zero is placed in the income and asset fields. *See*, for example, closed 2009 Case Nos. 460900087, 46090080, and 460900224.

Finding 4: Case review revealed that NPLS is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines. NPLS has partially implemented Corrective Action 3 of the 2007 Final Report but requires continued improvement in reference to issues regarding consistent intake screening of income and over-income case acceptance.

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's

household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

The issues of intake inconsistencies affecting program compliance with income eligibility pursuant to 45 CFR Part 1611 and over-income waivers are addressed in Finding 3 above.

Corrective Action 3 of the 2007 Final Report required NPLS to:

Revisit its over-income exception policy and procedures to require consideration of all factors required by 45 CFR §§ 1611.4 and 1611.5 and improve documentation of such decisions by revising the over-income form. One form should be used throughout the program. Staff involved in making over-income acceptance decisions must be trained in reference to the required factors.

The program's over-income exception policy and procedures are greatly improved since the time of the 2005 visit.⁵ Case review evidenced that NPLS is in compliance with the standards set forth in 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3 with few non-compliant cases. *See*, for example, closed 2009 Case Nos. 300900214 and 300702112. However, due to the inconsistent intake forms involving income noted in Finding 2 above and varied descriptions of over-income case acceptance throughout the program, a finding that NPLS has fully implemented Corrective Action 3 of the 2007 Final Report is not possible. As such, NPLS has partially implemented Corrective Action 3 of the 2007 Final Report and must provide additional training to staff regarding program policy and procedure involved in making over-income case acceptance decisions.

⁵ NPLS revised Income Guidelines were most recently adopted by its Board on January 30, 2009.

In a related issue, NPLS staff indicated that it does not inquire as to the income prospects of applicants. In addition, a place to note prospective income is not included in the CMS. Based on 45 CFR § 1611.7(a) and LSC's Office of Legal Affairs Advisory Opinion AO-2009-1006, NPLS must screen applicants for prospective income. As such, the program must update its intake policy reflect that intake staff must inquire as to an applicant's income prospects and provide training to intake staff regarding the same. Such training would fit well with other required NPLS training involving consistency of intake policies, procedures, and forms.

The program noted in its comments to the DR that intake staff has been instructed to inquire as to an applicant's income prospects. In addition, NPLS is working with other Pennsylvania programs to add a CMS field to document the prospective income inquiry.

Interviews further revealed that NPLS has a government exemption benefits in its income eligibility policy which allows staff to waive screening an applicant for income if they receive specific benefits. Most staff does not utilize the government benefit exemption but instead screens all applicants. It is recommended that NPLS provide training to intake staff regarding waiver of income screening per its government benefits exemption.

Finding 5: Case review demonstrated that NPLS is in compliance with asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, NPLS has not implemented Corrective Action 4 of the 2007 Final Report related to consistent asset eligibility screening.

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

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

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

Corrective Action 4 of the 2007 Final Report required NPLS to:

Ensure consistent asset screening that corresponds to the program's asset policy in all field offices.

The issues of intake inconsistencies affecting program compliance with asset eligibility pursuant to 45 CFR Part 1611 and over-asset waivers are addressed in Finding 2 above. Case review revealed substantial compliance with 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4 with few instances of non-compliance. *See*, for example, Case Nos. 410800857, an open case where the assets listed were \$5,500 and no asset waiver was present in the case file; and 200800096, a closed 2009 case in which the client had \$5,000 in a checking account for a one person household.⁶ However, due to inconsistent screening of assets in various field offices, it is not possible to conclude that all cases reviewed were consistently screened pursuant the program's asset policy. As such, NPLS has not fully implemented Corrective Action 4 of the 2007 Final Report and must provide additional training to staff regarding program policy and procedure involved in asset screening and over-asset waivers.

NPLS comments to the DR related to over-asset waivers are described in Finding 2 above. NPLS must also provide training to ensure that assets are screened consistently throughout the program.

Finding 6: NPLS is out of compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). As such, the program has not implemented Corrective Actions 6 and 8 of the 2007 Final Report.

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

Corrective Action 6 of the 2007 Final Report required NPLS to:

Confirm that citizenship and alien eligibility screening is consistently performed in all field offices, including use of standard forms in field offices, clinics, and outreach efforts.

Corrective Action 8 of the 2007 Final Report required the program to:

⁶ Program staff noted that Case No. 200800096 would be deselected for CSR reporting.

Provide on-going staff training and oversight regarding citizenship/alien eligibility requirements.

As noted in Finding 3 above, interviews with the intake staff revealed that citizenship/eligible alien screening is performed in an inconsistent manner throughout the program. While it appears that some training regarding citizenship/alien eligibility has been conducted since the time of the prior CSR/CMS review, it does not appear to have been successful throughout the program and NPLS has not provided adequate oversight that citizenship/alien eligibility requirements were being met. As such, the program has not fully implemented Corrective Actions 6 and 8 of the 2007 Final Report and is required to ensure that citizenship and alien eligibility screening is consistently performed in all field offices, including use of standard forms in field offices, clinics, and outreach efforts. In addition, NPLS must provide additional and on-going training regarding citizenship/alien eligibility and oversight field office progress in fulfilling citizenship/alien eligibility requirements.

In its comments to the DR, NPLS agreed to ensure that citizenship and alien eligibility screening is consistently performed in all field offices, including use of standard forms in field offices, clinics, and outreach efforts. In addition, the program agreed to provide additional and on-going training regarding citizenship/alien eligibility and oversight field office progress in fulfilling citizenship/alien eligibility requirements.

Case review revealed the majority of cases evidenced proper citizenship/eligible alien screening. *See*, however, Case Nos. 220800162, a closed 2008 case in which the required attestation of citizenship was missing; and 330800592, a closed 2008 case in which the client, who had only telephone contact with program staff, was checked on the intake form as having verified her citizenship by telephone even though the intake form also indicates that the client was in fact not a citizen but met the requirements of eligible alien status by having a child born in the United States and having applied for US citizenship. Although cases failing to evidence proper citizenship/eligible alien screening were not numerous within the total case sample, any deviation from full compliance with a regulation involving a restriction on legal assistance (in this case, restrictions on legal assistance to aliens) requires a finding of non-compliance from the documentation perspective.

In a related issue, staff interviews revealed that NPLS does not document the type of alien documentation that the applicant possesses during phone intakes as required by Program Letter 98-3. According to interviews, staff just checks the box that states that the caller is a non-citizen. NPLS must require that staff indicate in either the case notes or another location in the CMS what type of alien documentation is relied upon by the applicant for eligibility for services. This will ensure that there is comparable screening between telephone and in-person intake and compliance with Program Letter 98-3.

In its comments to the DR, the program agreed to indicate the type of alien eligibility documentation relied upon to provide services either in the case notes or another location in the CMS.

In addition, in certain field offices, applicants who show up at program offices when intake is closed can receive a brief in-person preliminary screening, and then are asked to call back for a full screening at a later time. Field offices engaging in this practice must obtain a written

citizenship attestation from all such “preliminary applicants” as a written citizenship attestation or review of alien eligibility documents is required for all applicants seen in-person by program staff, regardless of the program’s characterization of “preliminary” status.

In an additional issue, NPLS represents juveniles by court appointment in cases of dependency, neglect, and abuse. The program does not attempt to ascertain citizenship from the methods described in §1626.6(d)(1). *See*, for example, Case Nos. 410801412, 410801415, 410801279, and 410800337. Likewise, there appears to be no attempt to ascertain citizenship of a client who is incompetent in a guardianship case. *See*, for example, Case No. 300900495. All cases were discovered on non-LSC case lists. However, deselecting such cases for CSR reporting does not cure the non-compliance with 45 CFR Part 1626. The program is directed to LSC’s Office of Legal Affairs External Opinion EX-2008-1003 for guidance regarding such cases.

In its comments to the DR, NPLS indicated that it did not believe that LSC’s Office of Legal Affairs External Opinion EX-2008-1003 adequately addressed the program’s contracted services for representation in juvenile cases. NPLS stated that the requirement that a third party, “such as the Court or Children and Youth officials, certify the citizenship status of juveniles is unreasonable as those parties will probably not do it.” In order to support this contention, LSC requests that the program provide written documentation from officials from the courts and/or Children and Youth Services that they are unwilling to certify the citizenship of juveniles represented by NPLS if citizenship cannot be otherwise verified. Such documentation should be provided to LSC within 4 months following receipt of the Final Report. In the event such documentation cannot be obtained, NPLS must provide a written plan for obtaining citizenship/alien eligibility information in juvenile and guardianship cases to LSC no later than 5 months after receipt of the Final Report.

A review of PAI cases revealed that NPLS’ PAI intake screening is not compliant with 45 CFR Part 1626. This will be discussed in detail in Finding 18 below.

Finding 7: NPLS is in substantial compliance with the retainer requirements of 45 CFR § 1611.9. As such, NPLS has fully implemented Corrective Action 14 of the 2007 Final Report.

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The

lack of a retainer does not preclude CSR reporting eligibility.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

Corrective Action 14 of the 2007 Final Report required the program to:

Ensure all retainers are fully executed and include a specific description of the scope and subject matter of the representation. Staff training should be provided regarding retainer requirements.

Case review performed in the course of the 2009 FUR revealed that program has improved in reference to compliance with retainer agreement requirements. Except for a few cases, retainer agreements were present in the majority of cases in which they were required. *See*, for example, Case Nos. 220800162, a closed 2009 case; 220700145, a closed 2008 case; 550600221, a closed 2008 case; 550800506, a closed 2008 case; and 330600481, a closed 2007 case; each was an extended service case lacking a retainer agreement.

The more noteworthy issue revealed in the course of case review was that there continued to be instances in which the scope and/or subject matter of retainer agreements were not sufficiently articulated. *See*, for example, Case Nos. 410700092, a closed 2008 case in which the scope of the retainer was “prepare case for appeal hearing” without noting the subject matter of the representation; 410701369, a closed 2008 case in which the subject matter of the retainer was “mortgage foreclosure” without noting the scope of the representation; 300700620, a closed 2008 case in which the scope of the retainer was “prepare answer” without noting the subject matter; 300801353, a closed 2008 case in which the scope of the retainer agreement was “will prepare answer to *pro se* lawsuit” without noting the subject matter of the representation; and 450700620, a closed 2008 case in which subject matter of the retainer was “dependency” without noting the scope of the representation.

As the number of cases failing to either contain a retainer agreement or sufficiently describe the scope and/or subject matter of the representation did not rise to the level of a pattern of non-compliance, NPLS has fully implemented Corrective Action 14 and is in substantial compliance with 45 CFR § 1611.9. However, further training and oversight regarding retainer agreements, including sufficient description of scope and subject matter of the program’s representation, is recommended.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 8: NPLS is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts) as client statement of facts were present in files in which they were required. As such, Corrective Action 15 of the 2007 Final Report has been fully implemented.

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it

⁷ However, a retainer is more than a regulatory requirement. It is also a key document clarifying the expectations and obligations of both client and program, thus assisting in a recipient’s risk management.

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

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

Corrective Action 15 of the 2007 Final Report directed the program to:

Provide staff training in reference to the Statement of Facts requirements.

Case review evidenced that a statement of facts or verified complaint was present when required in all but one of the cases reviewed. *See* Case No. 20051468, an open case that did not include a Statement of Facts or signed, verified pleadings. As such, Corrective Action 15 of the 2007 Final Report has been fully implemented and the program is in compliance with 45 CFR Part 1636.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 9: NPLS is in compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

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

No corrective actions were noted regarding program priorities in the 2007 Final Report. Prior to the 2009 FUR visit, NPLS provided OCE with its Board-approved priorities. According to program staff, a needs survey was conducted and NPLS' board of directors adopted new priorities in April 2008.

Interviews with intake staff evidenced a good command of NPLS priorities, including standardized procedures regarding referral of cases outside of the NPLS's priorities. In addition, case review revealed no cases outside of program priorities. As such, the program is in compliance with 45 CFR § 1620.4 and § 1620.6(c).

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 10: Case review evidenced that NPLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). As such, NPLS has fully implemented Corrective Action 9 of the 2007 Final Report. However, the program is required to more stringently enforce its supervision of paralegal work.

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

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

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

Corrective Action 9 of the 2007 Final Report required the program to:

Provide staff training and oversight regarding the documentation of specific legal advice or assistance provided to its clients, including LSC definitions of reportable “cases”, in all program offices.

Case review evidenced that NPLS is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 the number of case files failing to document the provision of legal assistance did not evidence a significant pattern of non-compliance. *See*, for example, Case Nos. 410701674, a closed 2008 case; 550701304, a closed 2008 case; and 330800699, a closed 2009 case. As such, Corrective Action 9 has been fully implemented. However, a review of PAI files revealed issues regarding documentation of legal advice in PAI cases. This issue will be discussed in further detail in Finding 18 below.

In a related issue, Recommendation 5 of the 2007 Final Report suggested that NPLS “ensure all assistance provided by paralegals is supervised by a licensed attorney.”⁸ Program management indicated that it had reviewed paralegal supervision in individual field offices and articulated paralegal supervision procedures to its managing attorneys.

⁸ 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.

As revealed in the course of the 2009 FUR, many NPLS field offices had adequate paralegal supervision procedures in place. However, in some field offices, paralegals were providing legal assistance with little to no oversight by program attorneys contrary to NPLS management instruction. For example, one field office has a policy which requires letters sent by paralegals to include a co-signature by a staff attorney to evidence that they were reviewed and approved prior to sending. However, case review evidenced that no copies of co-executed letters were maintained in the files so no verification of this process could be conducted by the review team. It was uncertain whether this specific procedure applied to all field offices. In addition, interviews with managing attorneys and paralegals revealed that despite management instruction, paralegal work in certain offices was not fully supervised.

CSR Handbook (2008 Ed.) § 2.5 states, in part, that legal assistance must be provided either by authorized attorney or a “non-attorney under the direct supervision of a licensed attorney in accordance with the rules of practice in the jurisdiction”.⁹ Based on the above, it is clear that inconsistent standards of paralegal review continue to exist within the program. As such, the prior recommendation that the program ensure all assistance provided by paralegals proceeds under the supervision of a licensed attorney is now a required corrective action. NPLS must ensure all assistance provided by paralegals proceeds under the supervision of a licensed attorney and was required to include a description of its paralegal supervisory procedures for all field offices, including those without on-site managing attorneys, in its comments to the Draft Report.

In its comments to the DR, NPLS stated that it has a policy for the supervision of non-attorneys in its Practice Manual and provided a copy of such as an exhibit. The program noted that its policy permits staff to increase or decrease the level of supervision used based on experience and the performance of individual paralegals. NPLS indicated in its comments to the DR that the practice of co-signing letters referred to above was developed as a result of a complaint by a local attorney who was a member of the Pennsylvania Bar Association’s Unauthorized Practice of Law Committee and believed that legal aid paralegals were engaging in the unauthorized practice of law. NPLS noted that it changed its paralegal supervision policy in that office as “a response to the local environment.”

As the NPLS’ paralegal supervision policy attached as an exhibit to its comments to the DR was marked as a “draft”, LSC requests that NPLS provide a copy of the official paralegal supervision policy as soon as it becomes effective. LSC cautions the program, however, to ensure that its use of sampling in order to supervise paralegal work is consistent with Pennsylvania law regarding supervision of non-lawyers and the unauthorized practice of law.

⁹ This standard, however, may be waived if the jurisdiction allows waiver of attorney supervision or allows legal assistance by a non-attorney under specific circumstances. *See* CSR Handbook (2008 Ed.) § 2.5.

Finding 11: NPLS application of the CSR case closure categories requires significant improvement in order to be fully consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.). As such, NPLS has not implemented Corrective Action 10 of the 2007 Final Report.

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

As correct selection of closing codes was an issue during the 2005 CSR/CMS Review, Corrective Action 10 required the program to:

Provide staff training and oversight in reference to LSC closing codes, including closing code definitions, documentation, and timely case closure parameters.

Case files reviewed during the 2009 FUR demonstrated that NPLS' application of the CSR case closing categories continues to be inconsistent with CSR Handbook (2001 Ed.) Section VIII and CSR Handbook (2008 Ed.) Chapters VIII and X, particularly in reference to closing codes B – Limited Action, F – Settlement without Litigation, and L – Extensive Representation. There were numerous instances of case closing code errors within the case sample. *See*, for example, Case Nos. 410701043, a closed 2008 case in which F, not L, was appropriate as the case involved a settlement achieved by the program subsequent to the conclusion of litigation; 410801611, a closed 2008 case in which B, not F, was correct as there was no documentation of the actual settlement agreement; 410700613, a closed 2008 case in which the work in the file reflected A, not L, level work; 410800374, a closed 2008 case in which the closing code should have been I(b) rather than I(a) as there was an opposing party; 410700786, a closed 2008 case in which the work in the file supported selection of B, not L, as the closing code; 430700245, a case appearing on an open case list that had recently been closed with closing code I(a), but should be L because although NPLS attempted to represent client in a hearing, client did not show up and an order to dismiss was entered by the court; 410900300, a closed 2009 case that should be closed as an A, as opposed to a B, as only advice and a blank form was given to client; 410900175, a closed 2009 case which should have been closed as an I(b), rather than a G, because as NPLS represented client in a contested court hearing and a court order was issued; 410801033, a closed 2009 case which should have been closed as an F, not a G, as there was an agreement between the parties but no litigation pending; 340800163, a closed 2009 case which was incorrectly closed as an L despite file evidence of B-level legal assistance; 550800952, a closed 2009 case involving an appeal through the Unemployment Compensation Board Review and incorrectly closed as I(c) rather than H; 430800265, a closed 2008 case where closing code listed as G, but should have been I(b) because it was a contested court decision; and 410700740, a closed 2007 case that should have been a B, as opposed to an I, as the program assisted with document preparation at a *pro se* clinic and did not represent client at court. In addition, case review revealed several PAI cases with incorrect closing codes and PAI forms submitted for review included defunct closing codes C, D, E, and J. This will be discussed fully in Finding 18 below.

Several of the closing code errors discovered within the case sample are related to NPLS management's implementation of a time limitation policy regarding the use of B – Limited Action and L – Extensive Service closing codes. According to staff interviews, the time limitation policy required that cases fitting the B or L criteria must be closed as an L if more than a set amount of hours, most commonly described by staff as three hours, while cases under the amount must be closed as a B. Additional interviews revealed that certain staff believed that the time limitation policy also applied to court decisions and cases could only be closed as I if more than three hours were spent on the case.

In mandating such an arbitrary time limitation policy, NPLS has undermined the purpose of closing codes to accurately track the level of service provided to the client in each case. *See* CSR Handbook (2008 Ed.) § 8.1. Nowhere in the CSR Handbook (in either the 2001 or 2008 editions) has it ever been contemplated that time spent on a case alone accurately characterized the level of legal assistance provided to clients. To the contrary, CSR Handbook (2008 Ed.) § 8.3, footnote 54, specifically states that “[a]lthough not controlling, programs may also consider whether a substantial amount of time was charged to the case as evidence of extensive services.” This guidance was proffered as one of several factors used by advocates to accurately characterize the level of legal assistance provided to clients and to prevent the shortcut use of time alone to define the appropriate closing code. The time limitation policy also raised issues in reference to compliance with the timekeeping requirements of 45 CFR Part 1635 which are addressed in Finding 19 below.

As the number of cases lacking correct closing codes clearly evidences a pattern on non-compliance with CSR Handbook (2008 Ed.) Chapter VII, NPLS has failed to implement Corrective Action 10 of the 2009 Final Report and the program requires additional training and oversight as to correct use of closing codes consistent with CSR Handbook (2008 Ed.) Chapters VIII and X. Training on closing codes must be completed by the program no later than 2 months following receipt of the Final Report. The training must include all staff charged with case closing responsibilities. In addition, the program is required to submit a training agenda and copies of signed staff attendance sheets to OCE upon the conclusion of the training.

In its comments to the DR, NPLS agreed to provide training and oversight as to correct use of closing codes consistent with CSR Handbook (2008 Ed.) Chapters VIII and X.

NPLS is further required to review all closed 2009 staff and PAI cases prior to its 2009 CSR submission to ensure that the closing codes selected accurately reflect the level of legal assistance provided. In the event it has not already done so, the program must also immediately rescind its closing code time limitation policy upon receipt of the Draft Report. A copy of any communication confirming the rescission of the time limitation policy was requested with the program's comments to the Draft Report.

The program, in its comments to the DR, agree to review all closed 2009 staff and PAI cases prior to its 2009 CSR submission to ensure that the closing codes selected accurately reflect the level of legal assistance provided. In reference to the closing code time limitation policy noted above, NPLS stated that there is no time limitation policy regarding closing codes and no directives “in any form” exist on this issue. The program “acknowledged that the OCE team

received information from a *few* staff on this issue (emphasis supplied)” but indicated that NPLS staff, “as a whole, does not subscribe to the theory of a ‘time limitation’ policy.” NPLS further stated that “recognizing that a discrepancy exists, management has clarified this issue with the offices who mistakenly applied a non-existent policy to case closing codes.”

Finding 12: NPLS is in substantial compliance with the timely case closure requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3. As such, it has fully implemented Corrective Actions 11 and 13 of the 2007 Final Report.

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

Both timely case closure and dormancy were significant issues for NPLS during the 2005 CSR/CMS Review. As a result, Corrective Action 11 of the 2007 Final Report required the program to:

Institute a regular review of open cases in order to ascertain case status in reference to dormancy and other compliance issues.

In addition, Corrective Action 13 of the 2007 Final Report required NPLS to:

Provide staff training regarding the three-month, year-end reporting flexibility allowed pursuant to CSR Handbook (2001 Ed.), ¶ 3.3(a)(i).

Case review revealed instances of both dormant and untimely closed cases. *See*, for example, Case Nos. 410700613, a closed 2008 case in which the last advice noted in the file was on 8/27/08; 430700194, an open case which was closed in the file on 8/12/2008; 410700786, a

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

closed 2008 case in which all of the B-level work was in 2007; 300701762, a closed 2008 case which should have been closed in 2007 as a B; 220700388, a closed 2008 case closed as an A after being open from 7/3/07 to 9/12/08; and 460600362, a closed 2008 case opened in 2006 in which the court decision was granted 9/14/07 but the file was closed 8/8/08. As the number of dormant and untimely cases did not evidence a significant pattern of non-compliance, the program is in compliance with CSR Handbook (2008 Ed.), § 3.3 and has fully implemented Corrective Action 11 of the 2007 Final Report.

However, NPLS should be cautioned that a review of deselected cases revealed several that were deselected because they were untimely for CSR reporting purposes. *See*, for example, Case Nos. 550800357; 550800710; and 550800271.¹¹ Such a finding illustrates a continued issue with staff understanding of timely case closure parameters. Although the program is much improved in reference to accurate reporting of timely closed cases and evidences a grasp of the deselection mechanism, its compliance goals should encompass timely case closure in all instances. As such, it is highly recommended that the program provide additional staff training regarding timely case closure parameters and revisit its open case review procedures to ensure potentially dormant cases are identified in time to close them within the appropriate reporting year.

None of the cases detailed above involved a misunderstanding of the three-month, year-end reporting flexibility allowed pursuant to CSR Handbook (2001 Ed.), ¶ 3.3(a)(i). As such, NPLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 and has fully implemented Corrective Action 13 of the 2007 Final Report.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 13: Case review evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. As such, NPLS has fully implemented Corrective Action 16 of the 2007 Final Report.

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

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

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated

¹¹ Case No. 550800271 was correctly deselected but incorrectly placed on an LSC-eligible case list.

instances of assistance as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.3 and CSR Handbook (2008 Ed.), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2001 Ed.), ¶ 6.4 and CSR Handbook (2008 Ed.), § 6.4.

At the time of the 2005 CSR/CMS Review, NPLS was reporting a significant number of duplicate cases. As a result, Corrective Action 16 of the 2007 Final Report required that NPLS:

Ensure that its field offices use consistent procedures for duplicate cases, including referrals between field offices.

Case review during the 2009 FUR revealed a few duplicate files within the case sample. *See*, for example, Case Nos. 450700619, a closed 2008 case which was a duplicate of 450700620 and erroneously reported to LSC in the 2008 CSR; 210900408, an open 2009 case; and 410700835, an open case where the case was initially referred to a private attorney but was returned to NPLS and a new case number assigned, 410900269. Both case numbers are still open in the system. As so few duplicates were discovered within the case sample, the program has fully implemented Corrective Action 16 and NPLS is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 14: Corrective Actions 2, 5, 7, and 12 of the 2007 Final Report involved a review of closed 2006 and pending cases for various compliance issues. As closed 2006 cases were not included in the instant Follow-Up Review, a comprehensive finding as to whether these corrective actions were fully implemented cannot be made. However, NPLS must provide an update regarding the status of any pending cases opened under its prior intake system.

Corrective Actions 2, 5, 7, and 12 of the 2007 Final Report required the program to review its closed 2006 and pending cases for specific compliance issues prior to its 2006 CSR report to LSC and mark any non-compliant cases as non-CSR reportable.

Corrective Action 2 of the 2007 Final Report required the program to:

Review all closed 2006 and pending cases for compliance issues prior to submitting the 2006 CSR. If a case cannot be certified as compliant, it must be marked as non-reportable.

Corrective Action 5 of the 2007 Final Report required the program to:

Review all closed 2006 and pending cases originally opened under the LSCRS CMS to determine whether evidence of proper asset screening is present. This review should coincide with the review noted in Corrective Action 2 and should be completed prior to the program's 2006 CSR submission. If cases without proper asset screening are discovered, they must be re-screened for assets at the time of acceptance or excluded from future CSRs.

Corrective Action 7 of the 2007 Final Report required the program to:

Review all closed 2006 and pending cases originally opened under the LSCRS CMS to determine whether proper citizenship/alien eligibility screening is present. This review should coincide with the review noted in Corrective Action 2 and should be completed prior to the program's 2006 CSR submission. If cases without proper citizenship/alien eligibility screening are discovered, they must be re-screened for eligibility and properly documented, or excluded from future CSRs.

Corrective Action 12 of the 2007 Final Report required the program to:

Review all closed 2006 and pending cases to determine if the case was timely closed or is dormant. This review should coincide with the review noted in Corrective Action 2 and should be completed prior to the program's 2006 CSR submission. If cases without proper asset screening are discovered, they must be excluded from future CSRs.

It is worthy to note that the specific compliance issues noted in Corrective Actions 2, 5, 7, and 12 regarding closed 2006 and pending cases were more generally duplicated in other corrective actions of the 2007 Final Report.¹² The rationale for the specific review of all 2006 closed and pending cases was related to compliance errors discovered in the program's prior CMS known as LSCRS, an effort to highlight NPLS' failure to oversight closed cases, and an emphasis on providing an accurate 2006 CSR. NPLS management indicated that a review of all closed 2006 and pending cases was undertaken subsequent to the 2005 CSR/CMS visit and that all non-compliant cases were marked as non-CSR reportable. As such, findings regarding closed 2006 cases are somewhat moot.

As closed 2006 cases were not a part of the instant review due to time limitations, a comprehensive finding as to whether these corrective actions were fully implemented cannot be made. However, review of progress involving other corrective actions of the 2007 Final Report has provided evidence as to whether NPLS has adequately implemented measures to ameliorate any continuing compliance issues in the areas covered by Corrective Actions 2, 5, 7, and 12. For example, Corrective Actions 6 and 8 dealt with citizenship generally while Corrective Action 7 was geared towards closed 2006 cases. It was clear from the 2009 review, however, that an assumption can be made that if the program continues to have issues with citizenship, the issues likely would have been present in the closed 2006 cases as well.

According to program management, 6 pending cases remain that were opened under the prior LSCRS system. NPLS management indicated that it was unknown whether the 6 pending cases had been re-screened for asset and citizenship eligibility and dormancy since the time of the 2007 Final Report. As such, NPLS was requested to provide an update regarding the status of the 6 pending cases opened under the prior LSCRS system in its comments to the Draft Report.

In its comments to the DR, the program noted that 4 of the remaining 6 cases (on behalf of 5 clients) opened under LSCRS now have compliant citizenship attestations. The 2 other cases have the same client who cannot be located. The program, however, noted that the court record

¹² For example, Corrective Actions 6 and 8 dealt with citizenship generally while Corrective Action 7 was geared towards closed 2006 cases. It was clear from the 2009 review, however, that an assumption can be made that if the program continues to have issues with citizenship, the issues likely would have been present in the closed 2006 cases as well.

in one of her cases included an assertion that she was born in a specific city in Pennsylvania. NPLS submits that this assertion, coupled with her prior verbal assertion to intake staff that she was a citizen, provides sufficient proof that she is a U.S. citizen. In reference to asset eligibility, the program indicated that 4 of the 6 cases had income solely derived from Social Security benefits and, therefore, assets could be waived under NPLS policy regarding government benefits. In the remaining 2 cases, no asset waiver could be granted because the client had both income and Social Security benefits so the cases have been deselected. Based on the above, LSC is satisfied with the actions of NPLS in obtaining citizenship and asset eligibility information in the 6 remaining cases opened under LSCRS and deselected certain cases when necessary.

Finding 15: Case review, staff interviews, and limited document review evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Case review and staff interviews revealed no evidence that NPLS is involved in such activity. In addition, a limited review of accounting records and documentation for the period of 2008 through June 2009 and interviews with staff disclosed that NPLS does not appear to have expended any grant funds, or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b).

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 16: Case review evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

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

None of the case files reviewed involved legal assistance with respect to a fee-generating case. NPLS staff indicated that the program would not handle any fee-generating cases unless it was pursuant to the exceptions noted in the regulation.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 17: A limited review of NPLS' accounting and financial records, observations of the physical locations of program field offices, and interviews with staff evidenced compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity) in reference to sharing physical space with a non-LSC entity engaged in restricted activities.

LSC regulation 45 CFR Part 1610 was adopted to implement Congressional restrictions on the use of non-LSC funds and to assure that no LSC funded entity engage in restricted activities. Essentially, recipients may not themselves engage in restricted activities, transfer LSC funds to organizations that engage in restricted activities, or use its resources to subsidize the restricted activities of another organization.

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

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

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

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

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

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

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

From a limited review of the chart of accounts and the detailed general ledger for specific general ledger accounts for 2008 and 2009 (through June), observations of the physical locations of all NPLS field offices, and interviews with staff, NPLS does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

The letter sent to donors fully complies with 45 CFR § 1610.5 which requires that recipients provide written notification of the prohibitions and conditions that apply to the funds to the source of the funds.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 18: NPLS is in non-compliance with the requirements of 45 CFR Part 1614 (Private attorney involvement) due to its lack of reliable oversight of PAI case activities. In addition, review of financial documents and staff interviews evidenced inconsistent accounting of PAI-related activities. As such, NPLS has not implemented Corrective Actions 20, 21, and 23 of the 2007 Final Report. The program has implemented Corrective Actions 22 and 24 of the 2007 Final Report.

LSC regulations require LSC recipients to devote an amount of LSC and/or non-LSC funds equal to 12.5% of its LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. This requirement is referred to as the "PAI" or private attorney involvement requirement.

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the

market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. See 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. See 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

Recipients are required to develop a PAI Plan and budget. See 45 CFR § 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. See 45 CFR §§ 1614.4(a) and (b).

NPLS' PAI component encompasses both *pro bono* and contract-based private attorney involvement. Because the program does not have a PAI coordinator, PAI responsibilities are tasked to staff in individual field offices. Some field offices do not have a PAI caseload. Due to the number of issues identified in reference to NPLS' PAI component during the 2005 CSR/CMS review, five corrective actions were targeted towards PAI policies and procedures.

Corrective Action 20 of the 2007 Final Report required the program to:

Create a consistent procedure for acceptance, referral, and oversight for PAI activities in all field offices.

Corrective Action 21 of the 2007 Final Report required the program to:

Provide staff training regarding proper coding, oversight, closing, and timekeeping for PAI activities.

Corrective Action 22 of the 2007 Final Report required the program to:

Provide a memorandum detailing its efforts to organize its PAI program, including plans for consistent acceptance, oversight, case closure, timekeeping, and future compliance with its 12.5% PAI fiscal requirement no later than 30 days after the program's receipt of the Final Report.

Corrective Action 23 of the 2007 Final Report required the program to:

Revise its Judicare policies and procedures, including confirmation that its payments to Judicare attorneys fall within the parameters of executed contracts. In addition, the program must ensure a fiscally sound method to approve and track any Judicare billing overages.

Corrective Action 24 of the 2007 Final Report required the program to:

Post an inter-fund transfer to reimburse NPLS' LSC grant for erroneously reporting a non-LSC PAI-related transaction as a LSC transaction in its audited financial statements. This reimbursement should have been reported in the program's 2005 audited financial statement.

Subsequent to the 2005 CSR/CMS review, NPLS noted that creation of a consistent acceptance, referral, and oversight procedure for PAI activities in all field offices was in process, including staff training regarding proper coding, oversight, closing, and timekeeping for PAI activities. In addition, the program indicated that revision of its Judicare policies and procedures was in process.

However, staff interviews, review of program PAI policies, procedures, and forms, and case review revealed that NPLS continues to have significant issues regarding compliance with 45 CFR Part 1614. NPLS has fully implemented 2 of the 5 PAI-related corrective actions of the 2007 Final Report. Some of the issues are related to the general inconsistencies in intake noted above in Finding 3 but other issues are unique to the program's PAI component. In addition, although NPLS has an articulated PAI Plan, staff interviews and case review revealed that it is not followed.

In reference to Corrective Action 20, a review of the PAI practices throughout the program's field offices evidenced that NPLS does not have consistent PAI case acceptance, referral, and oversight procedure or forms. As observed in reference to intake, NPLS field offices use varied polices, procedures, and forms in reference to PAI. While some field offices evidenced good case acceptance, referral, and oversight procedure and forms, others had neither procedures nor forms in use for referral and oversight of PAI files. Consequently, many reviewed files were noted for lack of citizenship attestations, insufficient documentation of legal assistance, and dormancy/untimely case closure. *See*, for example, open Case Nos. 410801261, 410601506, 410800857, 410800893, 410700090, 410900858, 410601696; closed 2008 Case Nos. 320700085, 450800310, 41070117, 410600801; and closed 2009 Case Nos. 550500853 and 460800239.

In addition, staff interviews evidenced confusion as to which staff member was responsible for PAI oversight and case closure in certain field offices.

Further contributing to staff confusion regarding PAI oversight responsibilities is that a hard copy file is not opened for PAI files in some field offices. *See*, for example, closed 2008 Case Nos. 410700365, 41070117 and 410600801. As a result, required compliance information could not be reviewed in such files. NPLS was advised that all reported PAI files must include a citizenship attestation, documentation of legal advice and proof of oversight. Unless the program wishes to keep this information electronically by scanning required documents such as citizenship attestations, a hard copy file must be opened for each PAI file and include the above-referenced documentation.

In addition, review of PAI forms revealed that the PAI closing/request for payment form used by some field offices included the defunct closing codes C, D, E and J. Although some offices

indicated that this form was discontinued as of January 1, 2008 and a new standard form containing lines for the private attorney to describe the assistance provided was now in place, it is clear that other offices had not adopted the new form.¹³ As the C, D, E, and J codes have been inoperative since the CSR Handbook (2008 Ed.) became effective in January 2008, NPLS must eliminate all forms including the defunct closing codes and enforce use of the new standard PAI referral/closing form.

In its comments to the DR, NPLS agreed to eliminate all forms including the defunct closing codes and enforce use of the new standard PAI referral/closing form.

It is clear from the above that Corrective Action 20 has not been implemented. In addition, the level of non-compliance and disorganization within NPLS' PAI component illustrates that any training on involving proper coding, oversight, closing, and timekeeping for PAI activities was entirely ineffective. As such, Corrective Action 21 has also not been implemented.

In reference to Corrective Action 22, this corrective action has been implemented by the program as it has created a PAI Plan which does include an overall plan for consistent acceptance, oversight, case closure, timekeeping, and future compliance with its PAI requirements. However, NPLS' PAI Plan will remain merely an unused policy in certain field offices unless program management enforces it throughout the program.

In addition, the PAI Plan contains some erroneous information. The PAI Plan states that information obtained in Wyoming/Sullivan County Bar Association conflict cases are not entered into the CMS when, in actuality, it is stored there. Further, according to the PAI Plan, managing attorneys in each field office are tasked to serve as the Judicare liaison. However, interviews with staff revealed that in some field offices the managing attorney is responsible for PAI while in others it is a paralegal. It is recommended that NPLS revise its PAI Plan to ensure it is consistent with all sub-agreements and NPLS procedures.

In order to address the above-referenced issues, NPLS must make any necessary revisions to and provide training on standard PAI policies, procedures, and forms to be used by all field offices no later than 4 months following receipt of LSC's Final Report. Special emphasis must be placed on the requirement that each PAI case contains the requisite eligibility information, including but not limited to citizenship attestations, documentation of legal assistance, and oversight information either in a hard file or electronically. All staff with PAI responsibilities should be included in this training. One month after any revisions to and training on the program's standard PAI policy, procedures, and forms are completed, the program should provide OCE with a memorandum detailing any revisions to NPLS' standard PAI policies, procedures, and forms and include copies of signed staff attendance sheets from the training(s). In the memorandum, the program must also provide a plan detailing what specific and periodic oversight executive management will undertake to ensure PAI-responsible staff's implementation and proper

¹³ Staff was advised that it is better to have private attorneys provide a brief description of the legal assistance provided to the client as opposed to selecting an LSC closing code. Private attorneys likely will not understand the distinctions drawn by the CSR Handbook and it is a more accurate process for trained program staff to make the final CSR closing code selection.

understanding of the program's standard PAI policies, procedures, and forms. It must also ensure that each PAI case contains the requisite eligibility information, including but not limited to citizenship attestations, documentation of legal assistance, and oversight information either in a hard file or electronically.

NPLS, in its comments to the DR, agreed to make any necessary revisions to and provide training on standard PAI policies, procedures, and forms to be used by all field offices, including all staff with PAI responsibilities, and to provide a plan detailing what specific and periodic oversight executive management will undertake to ensure PAI-responsible staff's implementation and proper understanding of the program's standard PAI policies, procedures, and forms within the timeframes specified above.

Regarding Corrective Action 23, NPLS continues to be non-compliant regarding the payment and documentation of Judicare files. While there has been some improvement in reference to the revision of NPLS Judicare-related policies, a review of submitted PAI billings statements revealed that a majority of Judicare attorneys do not provide sufficient supporting documentation with their billing statement as required by Judicare contracts. NPLS' Judicare contract does not state what documentation should be submitted with billings statement but it does state that "Compensation will be conditional upon proper completion of necessary documentation and final payment for services will no be made until the Attorney provides all required documentation."

NPLS must require that Judicare attorneys provide adequate supporting documentation regarding the legal assistance provided with their billings as mandated by LSC and NPLS' Judicare contract. Regarding its contract, it is highly recommended the NPLS remove the general terminology in its Judicare contract and instead state language such as the following: This contract is on the condition that if payments exceed \$25,000 in a year, the attorney or law firm will engage in a sub-grant agreement that will need LSC's approval as required by 45 CFR § 1627.2(b)(1); and participating attorneys who are paid to represent clients pursuant to this program may not seek attorneys' fees from another source regarding those cases as required by 45 CFR § 1642.4 (b).

In its comments to the DR, the program agreed to provide adequate supporting documentation regarding the legal assistance provided with their billings as mandated by LSC and NPLS' Judicare contract.

In reference to Corrective Action 24, NPLS provided documentation from 2005 that shows the payments in question classified as non-LSC. As such, it appears that NPLS has fully implemented Corrective Action 24 of the 2007 Final Report.

Regarding the program's compliance with the fiscal requirements of 45 CFR Part 1614, NPLS' Audited Financial Statement ("AFS") for Fiscal Year Ending ("FYE") June 30, 2008 did report as separate expenditures support and expenses dedicated to the PAI effort, as required by 45 CFR § 1614.3(e)(2). The program reported a total of PAI expenditures of \$159,448 which translates to 9.2% of the total basic field grant (\$1,737,610) which does not comply with the 12.5% requirement. NPLS obtained a waiver from LSC for the 12.5% PAI minimum requirement.

Review of the spread sheet allocating PAI staff salary for FYE June 30, 2008, disclosed that NPLS incorrectly allocates the salaries of attorneys and paralegals by backing out from their hourly rates sick leave, vacation, benefits, etc. In determining the hourly rate for attorneys and paralegals who charge time to a recipient's PAI effort, a recipient should not back out leave and benefits from its cost allocation. Additionally, the determination must be based on total hours for which compensation is received pursuant to contract or recipient policy regardless of the actual number of hours worked by the staff attorneys and/or paralegals. NPLS must follow this allocation methodology using an hourly rate as the allocation factor, and that the hourly rate be computed at the employee's annual salary divided by NPLS' normal working hours. Further, travel and training expenses are being allocated on a percentage basis instead of actual basis.

To demonstrate the inaccuracy of the salary allocation methodology by NPLS, one attorney hourly rate was determined incorrectly by dividing the attorney's annual salary by hours worked, instead of dividing the attorney's annual salary by the total hours the attorney is obligated to work by NPLS' policy. This allocation method has the effect that leave, benefits, etc are not reflected in the hourly rate, and results in an inflated hourly rate. The hourly rate for the attorney should be \$23.00 (\$41,883.56, annual salary, divided by 1,820 hours, required to work per year per NPLS' policy), instead of \$202.83 (\$41,883.56, annual salary, divided by 206.50 actual hours worked).

The issue of incorrect PAI allocations was discussed on-site with the program's fiscal officer. It is required that NPLS revise its PAI allocation policy as required in the proceeding paragraph.

In its comments to the DR, NPLS indicated it is now computing its PAI-allocated salaries according to the methodology described herein.

In additional PAI-related fiscal information, NPLS on their AFS for FYE June 30, 2008 disclosed payments made to Lackawanna Pro Bono derived from non-LSC funds as an LSC PAI-related transaction. The Chief Financial Officer indicated that this mistake will be corrected and the 2009 AFS will correctly show the payment as a non-LSC PAI transaction.

Finding 19: Limited document review evidenced that NPLS is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or non-profit organization.

LSC regulation 45 CFR § 1627.4(a) requires that:

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

A limited review of accounting records and the detailed general ledger for 2008 and 2009 (through June 2009) disclosed that NPLS is in compliance with 45 CFR § 1627.4(a) as all non-mandatory dues and fees are being paid with non-LSC funds.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 20: Staff interviews and limited document review evidenced that the program is not in compliance with 45 CFR Part 1635 (Timekeeping requirements).

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

A simple test of the timekeeping records for two advocates selected from each of NPLS' offices for the pay period ending June 30, 2009 disclosed that timekeeping records are electronically and contemporaneously kept. Time spent on each case, matter or supporting activity appears to be recorded in compliance with 45 CFR §§ 1635.3(b) and (c). However, staff interviews identified an issue that negates compliance with 45 CFR Part 1635.

As noted in Finding 11 above, staff interviews revealed that NPLS management implemented a time limitation policy regarding the use of B – Limited Action and L – Extensive Service closing codes. According to staff, the time limitation policy required that cases fitting the B or L criteria must be closed as an L if more than a set amount of hours, most commonly described by staff as three hours, while cases under the amount must be closed as a B. This time limitation policy resulted in the incorrect closing of several L-level cases under the B closing code and B-level

cases under the L closing code. For example, *see* Case No. 340800163, a closed 2009 case which was incorrectly closed as an L despite file evidence of B-level legal assistance. Additional interviews revealed that certain staff believed that the time limitation policy also applied to court decisions and cases could only be closed as I if more than three hours were spent on the case.

Failure to comply with the closing codes mandated by CSR Handbook (2008 Ed.) Chapter VIII notwithstanding, this issue brings into question the accuracy of NPLS' timekeeping. Program staff stated that they would sometimes disobey the time limitation policy when, in their professional judgment, a case did not fit the definition of L and should be closed as a B even if the case was over three hours. For such cases, staff stated that, on occasion, they would receive instruction from NPLS management to reopen the case, remove the excess time, and re-close it as a B once ensuring that the time charge was three hours or less. Staff noted that they would routinely place such removed time into the program's "miscellaneous" time category.

The policy and actions described above clearly violate 45 CFR § 1635.3(b) which states: "Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity." In addition, the above-described policy and action conflict with 45 CFR § 1635.3(c) which states: "The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type." In mandating an arbitrary time limitation policy, the program has created a situation in which removal of actual case time resulted in inaccurate case time records. In addition, any aggregation of time would also be misstated and the use of "miscellaneous" time is completely inappropriate for specific time dedicated for a specific case. As noted by staff, this practice has also wasted advocate and support staff time in revisiting closed cases.

As the arbitrary time limitation policy created by management and its resulting directives clearly violate 45 CFR Part 1635, the program is out of compliance with this regulation. However, further information is requested prior to issuance of any corrective action regarding non-compliance with 45 CFR Part 1635. NPLS was required to submit, in its comments to the Draft Report, an explanation of the program's time limitation policy regarding case closing codes and copies of all management directives, including but not limited to memoranda, e-mail, and training materials, regarding the policy.

As noted above in Finding 11, the program stated in its comments to the DR that there is no time limitation policy regarding closing codes and that no directives "in any form" exist on this issue. The program "acknowledged that the OCE team received information from a *few* staff on this issue (emphasis supplied)" but indicated that NPLS staff, "as a whole, does not subscribe to the theory of a 'time limitation' policy." NPLS further stated that "recognizing that a discrepancy exists, management has clarified this issue with the offices who mistakenly applied a non-existent policy to case closing codes."

In an additional issue related to timekeeping, interviews with the program's Chief Financial Officer and accounting staff disclosed that there are no part-time case handlers working for an organization engaging in restricted activities. As such, the program is in compliance with 45 CFR § 1635.3(d).

Finding 21: NPLS is in compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

Case review revealed that NPLS is in compliance with 45 CFR Part 1642 as no cases were discovered in which attorneys' fees were claimed, collected, or retained. In addition, a limited review of the NPLS fiscal records, the 2008 Audited Financial Statement, and an interview with the program's Chief Financial Officer provided no evidence that attorneys' fees were awarded, collected, and retained for cases proscribed under 45 CFR Part 1642.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 22: A limited review of the program's internal controls evidenced adequate segregation of duties, internal controls, and defined procedures. However, some improvements are recommended.

NPLS has a Financial Management Policies Manual that is adequately documented that generally fits the requirements of the 1997 Accounting Guide for LSC Recipients. A review of the program's internal controls and payments disclosed that NPLS has good segregation of duties, internal controls and defined procedures through their Financial Management Policies Manual. However, a policy should be added for credit card use and the length of time outstanding checks should be kept on the books.

A limited review of payables including credit cards usage and payments for 2008 and 2009 disclosed adequate supporting documentation and corresponding approvals. However, NPLS does not have a credit card policy, and supporting documents are not being stamped as paid to avoid duplicate payments. It is recommended that NPLS implement a policy regarding use of credit cards as a good business practice.

The bank reconciliations for the operating client trust fund and investment accounts were reviewed and found to be reconciled and approved timely. However, 23 outstanding checks were found to be at least a year old. It is recommended that NPLS review any outstanding checks and proceed accordingly. In addition, NPLS should establish a policy that checks outstanding over a period of six months should be investigated and either reissued or canceled, based on the findings.

A limited review of salary advances for 2008 and 2009 disclosed that such advances are minimal and are deducted within the following four pay periods.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 23: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

Case review and interviews with NPLS management revealed no evidence that the program is involved in any lobbying or other prohibited activities.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 24: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).

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

Neither case review nor interviews with program management evidenced program involvement in providing legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 25: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define “class action” as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define “initiating or participating in any class action” as any involvement, including acting as co-

counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).¹⁴

None of the reviewed files involved initiation or participation in a class action. NPLS staff stated that the program was not involved in any class actions.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 26: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

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

Case review and staff interviews revealed no NPLS participation in litigation related to redistricting.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 27: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

Staff interviews and case review evidenced that NPLS is not involved in the defense of any such eviction proceeding.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 28: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on

¹⁴ It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

None of the cases reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. NPLS staff indicated the program does not represent prisoners regarding the circumstances noted above.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 29: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁵ This restriction has been contained in all subsequent appropriations acts.¹⁶ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

Staff interviews stated that the program does not participate in the solicitation of clients. In addition, none of the case files reviewed indicated program involvement in such activity.

NPLS made no remarks regarding this finding in its comments to the DR.

Finding 30: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

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

None of the case files reviewed involved activities related to assisted suicide, euthanasia, and mercy killing. NPLS staff noted that the program does not participate in such activity.

NPLS made no remarks regarding this finding in its comments to the DR.

¹⁵ *See* Section 504(a)(18).

¹⁶ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

Finding 31: Case review evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

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

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

All of the case files reviewed demonstrated compliance with the above-referenced LSC statutory prohibitions. In addition, program management indicated that the program does not participate in any activities related to the cited statutory prohibitions.

NPLS made no remarks regarding this finding in its comments to the DR.

IV. RECOMMENDATIONS¹⁷

Consistent with the findings of this report, it is recommended that NPLS take the following actions:

1. Investigate its methodology used to designate LSC-eligibility and make revisions, if necessary, to ensure accurate reporting of case statistics.

In its comments to the DR regarding the under-reporting of cases, NPLS noted that it had been asked to provide a non-LSC funded list not a non-LSC eligible list and this was the reason some cases that appeared to be LSC-eligible were present on non-LSC funded case lists. This explanation satisfies LSC's concerns.

2. Make a distinction in the CMS as to when an applicant is screened and their income is actually zero and when an applicant is not screened due to being served by other funding without financial eligibility restrictions and zero is placed in the income and asset fields.

3. Provide training to intake staff regarding waiver of income screening per its government benefits exemption.

4. Provide further training and oversight regarding retainer agreements, including sufficient description of scope and subject matter of the program's representation.

5. Provide additional staff training regarding timely case closure parameters and revisit its open case review procedures to ensure potentially dormant cases are identified in time to close them within the appropriate reporting year.

6. Revise its PAI Plan to ensure it is consistent with all sub-agreements and NPLS procedures.

7. Remove the general terminology in its Judicare contract and instead place language such as the following: This contract is on the condition that if payments exceed \$25,000 in a year, the attorney or law firm will engage in a sub-grant agreement that will need LSC's approval as required by 45 CFR § 1627.2(b)(1); and participating attorneys who are paid to represent clients pursuant to this program may not seek attorneys' fees from another source regarding those cases as required by 45 CFR § 1642.4 (b).

¹⁷ 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, NPLS is required to take the following corrective actions:

1. To the extent they are not duplicated in the corrective actions below, ensure that all outstanding Corrective Actions of the 2007 Final Report are fully implemented, except for Corrective Actions 2, 5, 7, and 12 involving closed 2006 cases.

In its comments to the instant DR, NPLS agreed to ensure that all outstanding Corrective Actions of the 2007 Final Report are fully implemented except for Corrective Actions 2, 5, 7, and 12 involving closed 2006 cases.

2. Implement a mechanism by which to consistently and accurately reproduce future CSR data.

In its comments to the DR, NPLS strongly disagreed with the above finding regarding the program's ability to run accurate CSRs. The program provided the requested memorandum regarding the differences between its reported CSR and the lists provided for the most recent on-site review. The memorandum, attached hereto as an exhibit, noted that the program did preserve its 2007 and 2008 CSR data in separate Excel spreadsheets which should satisfy Corrective Action 18 of the 2007 Final Report. In addition, NPLS noted that LSC's request for lists included data fields not used by the program in running its CSRs (first name, date opened, and advocate) which required a new query to the CMS and may have resulted in the errors noted above. The program also asserted that the difference of over 300 cases between the 2008 CSR and the on-site lists were likely the result of "pasting cases from a single program listing" into separate lists for each office as requested by LSC and mistakenly over-writing 257 cases. NPLS stated that when questioned by LSC regarding the discrepancies prior to the on-site review, the program's rationale and process was provided in a memorandum to LSC and no objection was raised to its method.

While NPLS' effort in explaining its CSR methodology prior to and following the on-site review is appreciated, a concern regarding the program's ability to re-create its reported CSRs remains. Corrective Action 18 of the 2007 Final Report was not satisfied as the program was unable to reproduce the CSR data "accurately in the future" despite having copied the data into separate files. In the course of its oversight responsibilities, LSC has made and reviewed identical case list requests of its grant recipients, including the Pennsylvania recipients which share the same type of case management software as NPLS, without the issues noted above. In an effort to ameliorate this issue, NPLS should run future CSRs using the fields and instructions noted in the May 11, 2009 on-site review letter as a guide.

3. Implement and provide training regarding a uniform definition of household applied to LSC-eligible cases. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

In its comments to the DR, NPLS indicated that it does not have different definitions of “household” but rather a definition of “household” for LSC-eligible cases and a definition for “family” for eligibility under other funding sources. According to the program, the two definitions are almost identical except for treatment of eligibility for 18-20 year olds. NPLS noted that in such cases, staff is directed to apply either the “household” or the “family” definition according to which best serves the goal of qualifying the applicant for services. In its comments to the DR, NPLS agreed to clarify the issue of household definition in its follow-up training.

4. Revise its policies to coincide with current staff procedures or provide training regarding its over-income case acceptance and over-income waiver policies. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

In its comments to the DR, the program indicated that the “over-income situations requiring a waiver are very limited” and that such “situations are regularly reviewed to determine that a waiver has been obtained.” While the program noted that proper handling of over-income applicants is the subject of periodic training, NPLS stated that it had no objection to including review of over-income and over-asset case acceptance policies and procedures in “future training plans.”

In reference to over-asset waivers, NPLS noted in its comments to the DR that it had recently changed its policy on over-asset waivers. According to NPLS, its prior policy had met with objections by state funders who were concerned with a waiver process which could result in disqualification of an applicant on the basis of excess assets when the applicant could be served with state funds that had no asset test. The policy was then revised so that applicants with assets exceeding LSC limits will be assigned to non-LSC funding sources and marked as non-LSC eligible. NPLS indicated in its comments to the DR that any staff confusion regarding this issue “is not surprising” because the policy was relatively new at the time of the on-site review.

5. Revisit its standard intake policies, procedures, and forms to ensure they comport with all intake-related findings contained within the Final Report and provide additional training(s) for all staff regarding NPLS’ standard intake policies, procedures, and forms no later than 4 months following receipt of LSC’s Final Report. One month after any revisions to, and training on, the program’s standard intake policy, procedures, and forms is completed, the program should provide OCE with a memorandum detailing any revisions to NPLS’ standard intake policies, procedures, and forms and include copies of signed staff attendance sheets from the training(s). In the memorandum, the program must also provide a plan detailing what specific and periodic oversight executive management will undertake to ensure that intake staff and managing attorneys properly understand and implement the program’s standard intake policies, procedures, and forms. The plan must include a preliminary schedule of physical visits to all field offices by NPLS executive management to ensure compliance with program directives regarding its standard intake protocol.

In its comments to the DR, NPLS requested that the LSC's original deadline of 2 months to complete any follow-up training required by the instant Final Report be extended to 6 months due to the size of the program's staff, its wide geography, and the number of compliance issues to be addressed. LSC extends the deadline for which follow-up training is to be completed to 4 months from the date of the instant Final Report. In short, the program has 4 months from receipt of the instant Final Report to revise its standard intake policies, procedures, and forms and provide training, and one month following the training to prepare and submit the above-described memorandum to LSC.

NPLS additionally noted in its comments to the DR that the program took exception to providing signed attendance sheets from its required training regarding intake policies, procedures, and forms. The requirement of providing signed attendance sheets is not a unique requirement for NPLS and has been used previously and without issue in the case of programs in which continuing compliance issues are identified in a Follow-Up Review. The requirement provides documentation that the training has been attended by required staff. In addition, as the majority of programs use signed attendance sheets to document employee attendance at trainings, it is not particularly burdensome. As such, LSC reiterates its request that NPLS attach signed attendance sheets with its required memorandum.

6. Update its intake policy to reflect that staff must inquire as to an applicant's income prospects and provide training to staff regarding the same. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

The program noted in its comments to the DR that intake staff has been instructed to inquire as to an applicant's income prospects. In addition, NPLS is working with other Pennsylvania programs to add a CMS field to document the prospective income inquiry.

7. Provide staff training regarding program policy and procedure involved in asset screening and over-asset waivers. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

See Corrective Action 4 above.

8. Ensure that citizenship and alien eligibility screening is consistently performed in all field offices, including use of standard forms in field offices, clinics, and outreach efforts. In addition, NPLS must provide additional and on-going training regarding citizenship/alien eligibility and oversight field office progress in fulfilling citizenship/alien eligibility requirements. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

In its comments to the DR, NPLS agreed to ensure that citizenship and alien eligibility screening is consistently performed in all field offices, including use of standard forms in field offices, clinics, and outreach efforts. In addition, the program agreed to provide

additional and on-going training regarding citizenship/alien eligibility and oversight field office progress in fulfilling citizenship/alien eligibility requirements

9. Require that staff indicate in either the case notes or another location in the CMS what type of alien documentation is relied upon by the applicant for eligibility for services. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

In its comments to the DR, the program agreed to indicate the type of alien eligibility documentation relied upon to provide services either in the case notes or another location in the CMS.

10. Review and implement LSC's Office of Legal Affairs External Opinion EX-2008-1003 regarding representation of juveniles. As this corrective action involves an intake issue, it should be included in the training detailed in Corrective Action 5 and is subject to the same time limitations.

In its comments to the DR, NPLS indicated that it did not believe that LSC's Office of Legal Affairs External Opinion EX-2008-1003 adequately addressed the program's contracted services for representation in juvenile cases. NPLS stated that the requirement that a third party, "such as the Court or Children and Youth officials, certify the citizenship status of juveniles is unreasonable as those parties will probably not do it." In order to support this contention, LSC requests that the program provide written documentation from officials from the courts and/or Children and Youth Services that they are unwilling to certify the citizenship of juveniles represented by NPLS if citizenship cannot be otherwise verified. Such documentation should be provided to LSC within 4 months following receipt of the Final Report. In the event such documentation cannot be obtained, NPLS must provide a written plan for obtaining citizenship/alien eligibility information in juvenile and guardianship cases to LSC no later than 5 months after receipt of the Final Report.

11. Ensure all assistance provided by paralegals proceeds under the supervision of a licensed attorney. NPLS should include a description of its paralegal supervisory procedures for all field offices, including those without on-site managing attorneys, in its comments to the instant Draft Report.

In its comments to the DR, NPLS stated that it has a policy for the supervision of non-attorneys in its Practice Manual and provided a copy of such as an exhibit. The program noted that its policy permits staff to increase or decrease the level of supervision used based on experience and the performance of individual paralegals. NPLS indicated in its comments to the DR that the practice of co-signing letters referred to above was developed as a result of a complaint by a local attorney who was a member of the Pennsylvania Bar Association's Unauthorized Practice of Law Committee and believed that legal aid paralegals were engaging in the unauthorized practice of law. NPLS noted that it changed its paralegal supervision policy in that office as "a response to the local environment."

As the NPLS' paralegal supervision policy attached as an exhibit to its comments to the DR was marked as a "draft", LSC requests that NPLS provide a copy of the official paralegal supervision policy as soon as it becomes effective. LSC cautions the program, however, to ensure that its use of sampling in order to supervise paralegal work is consistent with Pennsylvania law regarding supervision of non-lawyers and the unauthorized practice of law.

12. Provide training and oversight as to correct use of closing codes consistent with CSR Handbook (2008 Ed.) Chapters VIII and X. Training on closing codes must be completed by the program no later than 2 months following receipt of the Final Report. The training must include all staff charged with case closing responsibilities. In addition, the program is required to submit a training agenda and copies of signed staff attendance sheets to OCE upon the conclusion of the training(s).

In its comments to the DR, NPLS agreed to provide training and oversight as to correct use of closing codes consistent with CSR Handbook (2008 Ed.) Chapters VIII and X.

13. Review all closed 2009 staff and PAI cases prior to its 2009 CSR submission to ensure that the closing codes selected accurately reflect the level of legal assistance provided. In the event it has not already done so, the program must also immediately rescind its closing code time limitation policy upon receipt of the Draft Report. A copy of any communication confirming the rescission of the time limitation policy should be provided with the program's comments to the Draft Report.

The program, in its comments to the DR, agreed to review all closed 2009 staff and PAI cases prior to its 2009 CSR submission to ensure that the closing codes selected accurately reflect the level of legal assistance provided. In reference to the closing code time limitation policy noted above, NPLS stated that there is no time limitation policy regarding closing codes and no directives "in any form" exist on this issue. The program "acknowledged that the OCE team received information from a *few* staff on this issue (emphasis supplied)" but indicated that NPLS staff, "as a whole, does not subscribe to the theory of a 'time limitation' policy." NPLS further stated that "recognizing that a discrepancy exists, management has clarified this issue with the offices who mistakenly applied a non-existent policy to case closing codes."

14. Provide an update regarding the status of the 6 pending cases opened under prior LSCRS system.

In its comments to the DR, the program noted that 4 of the remaining 6 cases (on behalf of 5 clients) opened under LSCRS now have compliant citizenship attestations. The 2 other cases have the same client who cannot be located. The program, however, noted that the court record in one of her cases included an assertion that she was born in a specific city in Pennsylvania. NPLS submits that this assertion, coupled with her prior verbal assertion to intake staff that she was a citizen, provides sufficient proof that she is a U.S. citizen. In reference to asset eligibility, the program indicated that 4 of the 6 cases

had income solely derived from Social Security benefits and, therefore, assets could be waived under NPLS policy regarding government benefits. In the remaining 2 cases, no asset waiver could be granted because the client had both income and Social Security benefits so the cases have been deselected. Based on the above, LSC is satisfied with the actions of NPLS in obtaining citizenship and asset eligibility information in the 6 remaining cases opened under LSCRS and deselected certain cases when necessary.

15. Eliminate all PAI forms containing defunct closing codes and enforce the use of the new standard PAI referral/closing form. As this corrective action involves a PAI issue, it should be included in the training detailed in Corrective Action 16 and is subject to the same time limitations.

In its comments to the DR, NPLS agreed to eliminate all forms including the defunct closing codes and enforce use of the new standard PAI referral/closing form.

16. Make any necessary revisions to and provide training on standard PAI policies, procedures, and forms to be used by all field offices no later than 2 months following receipt of LSC's Final Report. Special emphasis must be placed on the requirement that each PAI case contains the requisite eligibility information including, but not limited to, citizenship attestations, documentation of legal assistance, and oversight information either in a hard file or electronically. All staff with PAI responsibilities should be included in this training. One month after any revisions to and training on the program's standard PAI policy, procedures, and forms are completed, the program should provide OCE with a memorandum detailing any revisions to NPLS' standard PAI policies, procedures, and forms and include copies of signed staff attendance sheets from the training. In the memorandum, the program must also provide a plan detailing what specific and periodic oversight executive management will undertake to ensure PAI-responsible staff's implementation and proper understanding of the program's standard PAI policies, procedures, and forms. It must also ensure that each PAI case contains the requisite eligibility information, including but not limited to citizenship attestations, documentation of legal assistance, and oversight information either in a hard file or electronically.

NPLS, in its comments to the DR, agreed to make any necessary revisions to and provide training on standard PAI policies, procedures, and forms to be used by all field offices, including all staff with PAI responsibilities, and to provide a plan detailing what specific and periodic oversight executive management will undertake to ensure PAI-responsible staff's implementation and proper understanding of the program's standard PAI policies, procedures, and forms within the timeframes specified above.

17. Require that Judicare attorneys provide, with their billings, adequate supporting documentation regarding the legal assistance provided as mandated by LSC and NPLS' Judicare contract. As this corrective action involves a PAI issue, it should be included in the training detailed in Corrective Action 16 and is subject to the same time limitations.

In its comments to the DR, the program agreed to provide adequate supporting documentation regarding the legal assistance provided with their billings as mandated by LSC and NPLS' Judicare contract.

18. Revise its PAI allocation methodology using an hourly rate for attorneys and paralegals that devote time to PAI as the allocation factor, and that the hourly rate be computed at the attorneys and paralegals annual salaries divided by NPLS' normal working hours.

In its comments to the DR, NPLS indicated it is now computing its PAI-allocated salaries according to the methodology described herein.

19. Provide an explanation of the program's time limitation policy regarding case closing codes in its comments to the Draft Report, including copies of all management directives, including but not limited to memoranda, e-mail, and training materials, regarding the policy.

The program, in its comments to the DR, agreed to review all closed 2009 staff and PAI cases prior to its 2009 CSR submission to ensure that the closing codes selected accurately reflect the level of legal assistance provided. In reference to the closing code time limitation policy noted above, NPLS stated that there is no time limitation policy regarding closing codes and no directives "in any form" exist on this issue. The program "acknowledged that the OCE team received information from a *few* staff on this issue (emphasis supplied)" but indicated that NPLS staff, "as a whole, does not subscribe to the theory of a 'time limitation' policy." NPLS further stated that "recognizing that a discrepancy exists, management has clarified this issue with the offices who mistakenly applied a non-existent policy to case closing codes."