FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Neighborhood Legal Services of Los Angeles County
May 4-8, 2009
Case Service Report/Case Management System Review

Recipient No. 805180

I. EXECUTIVE SUMMARY

Finding 1: NLSLA's use of its automated case management system ("CMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately recorded.

Finding 2: Case review, staff interviews, and review of program documents evidenced that NLSLA's intake procedures generally support the program's compliance-related requirements.

Finding 3: Case review revealed that NLSLA 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. However, the program is not properly documenting certain factors used in accepting over-income clients pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

Finding 4: Case review demonstrated that NLSLA 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.

Finding 5: NLSLA is in compliance with the restrictions on service to ineligible aliens set forth in 45 CFR Part 1626. However, the program is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that files lacked required citizenship/alien eligibility documentation.

Finding 6: NLSLA is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

Finding 7: NLSLA 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 all files in which they were required.

Finding 8: NLSLA is in substantial compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: Case review evidenced that NLSLA is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: NLSLA's 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.).

Finding 11: NLSLA requires some improvement with the timely case closure requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, particularly in reference to its open case review methodology.

Finding 12: NLSLA is out of compliance with CSR Handbook (2008 Ed.), § 4.4 as it is incorrectly reporting cases served by staff of a separate entity operating under a non-LSC grant in its Case Service Reports.

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.

Finding 14: Case review, staff interviews, and limited document review evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: A limited review of NLSLA's 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. However, NLSLA's donor letter requires revision to notify contributors of the LSC-related prohibitions and conditions that apply to the funds.

Finding 17: NLSLA is in non-compliance with the requirements of 45 CFR Part 1614 (Private attorney involvement) due to its lack of a formal PAI Plan. In addition, review of financial documents and staff interviews evidenced incorrect accounting of PAI-related activities.

Finding 18: Limited document review evidenced that NLSLA 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 19: A limited review of NLSLA's payable accounts using LSC funds disclosed no exceptions. However, it is recommended that the program develop a policy setting limits for meals and lodging.

Finding 20: Staff interviews and limited document review evidenced that case handlers are keeping time in accordance with 45 CFR Part 1635 (Timekeeping requirements).

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

Finding 22: Case review, staff interviews, and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 23: 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 24: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 25: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 26: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 27: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 28: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 29: Case review and staff interviews evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 30: 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 May 4 to 8, 2009, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") on-site visit to Neighborhood Legal Services of Los Angeles County ("NLSLA"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of four attorneys, one management analyst, and one fiscal analyst. Three of the attorneys and the fiscal analyst were OCE staff members; the remaining attorney and management analyst on the team were LSC consultants.

The 2009 on-site CSR/CMS review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that NLSLA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed NLSLA 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 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of NLSLA's upper and middle management, staff attorneys and support staff. NLSLA's 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, 2006 through March 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 504 case files which included 190 targeted files.

NLSLA is an LSC recipient with 3 field offices California. The administrative office is headquartered in Glendale, CA and field offices are located in Glendale, El Monte, and Pacoima, CA. NLSLA is one of 11 LSC-funded recipients in the state of California.

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

In 2009, NLSLA received $5,136,861 in LSC Basic Field Grant funds. In 2008, NLSLA reported 5,491 closed cases in its CSR data. NLSLA's Self-Inspection Certification Form evidenced a 2.5% error rate with exceptions noted in 4 out of 153 files reviewed. Exceptions included two cases which were reported more than once with the same client problem code, and set of facts and two cases that did not fall within an eligible case type (i.e. a restricted case type such as a class action, abortion case, redistricting case, representation of an incarcerated person, etc. or a case type that may be pursued with non-LSC funds. In 2007, 93.5% of its representation was for limited service cases, and 6.5% for extended service cases. Its three primary areas of representation were Housing (34.6%), Health (34.4%), and Income Maintenance (12.6%).

By letter dated March 3, 2009, OCE requested that NLSLA provide a list of all cases reported to LSC in its 2006 CSR data submission ("closed 2006 cases"), a list of all cases reported 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 March 31, 2009 ("closed 2009 cases"), and a list of all cases which remained open as of March 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 NLSLA prepare two sets of each list - one for cases handled by NLSLA staff and the other for cases handled through NLSLA's PAI component. NLSLA 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. 9 and 10, and the LSC Access to Records (January 5, 2004) protocol. NLSLA 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 2006, 2007, 2008, 2009 closed cases and open cases, as well as a proportionate distribution of cases from NLSLA's 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 NLSLA agreement of April 6, 2009, NLSLA 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] NLSLA's management and staff cooperated fully in the course of the review process. As discussed in more detail below, NLSLA was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as NLSLA management.

At the conclusion of the visit on May 8, 2009, OCE conducted an exit conference during which NLSLA was made aware of any preliminary areas in which a pattern of non-compliance was

[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.

found. No distinction in compliance between 2007, 2008, and 2009 cases was noted. NLSLA 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.

NLSLA was provided a Draft Report ("DR") on August 19, 2009 and was given an opportunity to comment. NLSLA's comments to the DR were received on October 13, 2009. The program's comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

III. FINDINGS

Finding 1: NLSLA's use of its automated case management system ("CMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately recorded.

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.

NLSLA uses proprietary software to operate its CMS. Case review revealed few instances of inconsistent information between the case file and the CMS. As such, NLSLA's use of its automated CMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately recorded. However, certain issues were revealed during the review that warrant continued efforts on the part of NLSLA management.

In October 2008, the program implemented a new version of its software that included significant improvements to support compliance documentation. The revamped software also introduced technological advances, including the ability to scan documents into the case record. However, neither the old nor the new version of the CMS software included a field to identify private attorney involvement ("PAI") cases. Accordingly, for CSR purposes, NLSLA has historically e-mailed staff asking them to identify all cases involving private attorneys.[3] NLSLA similarly followed this practice in responding to LSC's on-site review request for closed PAI cases reported to LSC in 2006, 2007, 2008, and 2009 and PAI cases open as of March 31, 2009. This method revealed errors which shed doubt on the accuracy of the data reported to LSC. For example, the LSC grantee profile reflects that in 2006 NLSLA reported 0 PAI cases while the list prepared for the on-site review noted four closed 2006 PAI cases. In 2007, the NLSLA grantee profile reflects that the program reported nine PAI cases and the on-site review list noted five closed 2007 PAI cases. In addition, cases closed in 2008 were included on the open case lists which resulted in the cases being selected for review twice. The manually compiled PAI lists also reflected numerous instances of inaccurate information including typographical errors in client names, case numbers, as well as open and closed dates.[4]

As a result of the LSC on-site review data request, NLSLA added a field to its CMS to record the open date for PAI cases. Accordingly, it is now possible for NLSLA to generate PAI case lists from the CMS. It is important to note that for this feature to generate accurate PAI lists, case handlers with cases co-counseled with private attorneys must re-identify those cases and enter

[3] NLSLA does not have a traditional PAI program in which cases are referred to private attorneys through a PAI coordinator. Instead, NLSLA staff attorneys co-counsel cases with private attorneys. This issue is discussed in more detail in Finding 17 below.

[4] For example, s*ee* Case No. 647052, in which the case list recorded an open and closed date of 10/20/08 but the file reflected an open dated of 4/29/08 and a closed date of 10/20/08; and Case No. 540679, in which the case list recorded an open date of 8/26/06 and a closed date of 12/31/06 but the file reflected an open date of 8/28/06 and a closed date of 12/15/06.

the open date. Accordingly, it is recommended that NLSLA follow-up to ensure that all PAI cases have been properly re-coded and that the CMS is accurately generating PAI case lists.

In addition, it was discovered in the course of the on-site review that the lists of staff cases reported to LSC in 2006, 2007, and 2008 do not match the program's reported CSRs. The 2006 case list for the review included 198 staff cases more than the number reported on CSRs. The 2007 list included 24 more staff cases and the 2008 case list included 2 more. When queried as to the discrepancy, NLSLA management reported that it had undertaken training efforts within the past few years on proper case closure guidelines and advising case handlers not to change information after cases have been reported – which was the primary reason for the discrepancies. Further, the new improvements to its CMS and more stringent supervisory oversight policies that have been implemented seem to have been effective as the number of discrepancies has significantly decreased in the last two years. No corrective action is necessary but NLSLA is encouraged to continue to monitor the effectiveness of training efforts regarding the proper closing of cases.

In its comments to the DR, NLSLA indicated that it plans to continue monitoring its performance regarding proper closing of cases.

In a related issue, NLSLA did not implement this new software until October 2008, and the program did not implement the new CSR closing codes of the CSR Handbook (2008 Ed.), § 3.1 for the majority of 2008. This is discussed in more detail in Finding 10 below. An additional issue regarding the CMS and documentation of over-income case acceptance is addressed below in Finding 3.

Finding 2: Case review, staff interviews, and review of program documents evidenced that NLSLA's intake procedures generally support the program's compliance-related requirements.

NLSLA is organized according to seven substantive advocacy groups: Workers' Rights, Family Law, Administrative Law, Community Development, Health Consumer Center, Consumer and Housing, and Immigration. Each substantive unit conducts intake screening pursuant to varying schedules and in different forums. Some advocacy groups are based out of a single NLSLA field office, while other advocacy groups are located at two or three of the program's offices. Accordingly, some advocacy groups conduct intake at more than one office. Some advocacy groups conduct intake at outreach locations, while others conduct outreach presentations but refer applicants to in-house intake. All advocacy groups also receive referrals from other NLSLA advocacy groups when applicants have legal problems in more than one substantive area. In addition, some advocacy groups have relationships with local community agencies from which they receive formal referrals. Lastly, some advocacy groups receive intake referrals from NLSLA-operated self-help legal information centers and clinics.[5] Staff indicated that applicants had the option to apply via telephone or in-person at the program's field offices.

[5] NLSLA operates several courthouse-based domestic violence clinics and self-help legal access centers, as well as many clinics which provide legal information and are reported to LSC as "other services." In the event any attendees request additional assistance, they are screened for eligibility through the regular NLSLA intake process.

A review of the program's intake screening policies, procedures, and forms substantiated that NLSLA's intake system generally supports its compliance-related requirements. Interviews revealed that although NLSLA's intake system is decentralized and involves many staff, eligibility screening practices are uniform and staff is trained on LSC regulations and the requirements of the CSR Handbook (2008 Ed.).[6] Essential eligibility and other compliance-related information are gathered on standard forms, including citizenship attestations, retainers, and case closing checklists, that are utilized program-wide. While certain intake features vary by advocacy group, they share standardized practices and procedures.

The only major eligibility screening discrepancy identified is in reference to asset recordation. Some staff records all household assets while others record only those assets that are not exempt. Accordingly, some files appear to be ineligible due to the inclusion of the equity value of an excluded home. As discussed in Finding 4 below, recordation of applicant assets should be consistent throughout the program. As such, it is strongly recommended that NLSLA provide staff training on the program's policy for recording assets and ensure consistent application of the policy.

NLSLA stated in its comments to the DR that the program had made a number of edits to its CMS in order to automate its asset policy, including the removal of excluded assets as selectable options in the eligibility section of the intake. In addition, if non-excluded assets exceed the asset limit, the CMS will direct the case handler to a section used to determine whether or not a waiver applies. The program also noted in its comments to the DR that all staff will be trained regarding NLSLA's policy for recording assets by the end of October 2009 and that supervisors will be required to review asset information on all intakes for two months following the training to ensure consistent application of the policy.

Finding 3: Case review revealed that NLSLA 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. However, the program is not properly documenting certain factors used in accepting over-income clients pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

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.

[6] One or more staff in each advocacy group was interviewed regarding intake screening procedures.

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.

NLSLA's revised Financial Eligibility Standards were adopted by its Board on April 30, 2009.[7]

In general, case review evidenced appropriate documentation of income eligibility but some over-income cases were discovered within the sample that had no evidence of proper over-income case acceptance. *See*, for example, Case Nos. 609924, a closed 2007 case; 557712, a closed 2007 case; and 65826, a closed 2009 case. Because the number of such cases does not represent a significant pattern of non-compliance with 45 CFR Part 1611, NLSLA is in substantial compliance with the income eligibility documentation required by 45 CFR Part 1611 for clients whose income does not exceed 125% of the Federal Poverty Guidelines. It is, however, recommended that the program provide additional training in reference to the proper documentation of over-income clients accepted for services in accordance with the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

Case review also disclosed that the program is not properly documenting which factors are used in accepting over-income clients pursuant to the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4). As noted above, programs accepting cases that fall within the specified over-income parameters are required to "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). Several cases were discovered that involved clients whose income was over 125% of the Federal Poverty Guidelines but the program failed to include proper documentation regarding the specific factors selected under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4) to accept such over-income clients for services. *See*, for example, Case Nos. 646527, a closed 2008 case; 597817, a closed 2008 case; 643740, a closed 2009 case; 517432, a closed 2009 case; 545745 a closed 2007 case; and 569777, a closed 2007 case.

NLSLA's CMS over-income case acceptance fields include specifically named factors such as "medical expenses" but also include an "other" factor box which staff is required to manually fill in to describe the "other" factor. In many of above-referenced cases, the "other" factor box was

[7] The policy was obtained from NLSLA management during the on-site visit as it was not final at the time the program's document request was submitted to LSC.

selected in the CMS but no description of what that other factor might be was included in either the file or the CMS. As it was discovered that the CMS would not print out the "other" factor information even if it was described in the CMS record, the on-site team in conjunction with NLSLA intermediaries undertook a CMS review of many of the hard files that did not appear to have a specific "other" factor listed. While there were some cases that did have a description of the "other" factor (which had not printed out from the CMS record), in the majority of the files this section was blank. This issue is easily solved technologically by programming the CMS to (a) ensure that the "other" field must be filled out with a description of the relevant factor, and (b) ensure that the description of the "other" field is visible when printing a case record from the CMS. The issue was discussed on-site with program management.

As the number of over-income cases with blank "other" boxes impacts compliance with 45 CFR § 1611.5(b), NLSLA is required to create a method to ensure that a specific over-income case acceptance factor is detailed in either the case file or the CMS.

In its comments to the DR, the program indicated that its CMS had been edited to ensure that over-income case acceptance factors are appropriately detailed. As a result, when the "other" box is now selected, the CMS prompts the case handler to explain in the blank space immediately next to it what factors are being considered. The intake will not save as complete until this mandatory field is completed. In addition, changes have also been made to the CMS to ensure that the "other" factor(s) described will print out on a hard copy of the intake form. Case handlers have also been directed to further describe any specifics of factors selected in the case notes. For example, if the factor "seeking government benefits" box is checked, the case notes may reflect a client is applying for CalWorks.

NLSLA additionally noted that all staff will be re-trained regarding NLSLA's policy for proper documentation of over-income clients accepted for service by the end of October 2009, including how to effectively utilize the recent changes to the CMS noted above.

Two additional issues were raised in the course of the on-site review in reference to 45 CFR Part 1611. The first issue involved NLSLA's group eligibility policy which requires applicants to complete a Group Client Application and a Declaration of Eligibility. Interviews revealed that under current program practice, staff relies solely on the group's Declaration of Eligibility and does not conduct an independent review and analysis of the group's financial eligibility. Under the 45 CFR § 1611.6, a recipient must make the assessment that a group client is financially eligible. Once the recipient has made this determination, the recipient "shall collect information that reasonably demonstrates that the group, corporation, association, or other entity meets the eligibility criteria set forth herein." *See* 45 CFR § 1611.6(b)(2). Although the regulations do not specify what type of information must be collected and maintained, it is clear that the recipient must collect such relevant information as would support the financial eligibility determination of the group client. *See also* Preamble to Final Rule, Part 1611, 70 Fed. Reg. 45545 at 45562 (August 5, 2005). In light of the foregoing, it is recommended that NLSLA document its independent analysis of a group's financial eligibility as opposed to relying solely on a group's Declaration of Eligibility.[8] As in the case of intake staff analysis of individual client eligibility,

[8] An interview with the supervising attorney of the Community Development Advocacy Group indicated that NLSLA's few group clients are often new non-profit organizations seeking tax-exempt status and are unlikely to

such documentation would clearly evidence the program's eligibility determination of a group client.

In its comments to the DR, NLSLA "respectfully disagrees with the Draft Report's underlying claim that the Federal Register's Preamble discussion about an independent analysis of group LSC eligibility creates a regulatory obligation on programs." The Draft Report, however, only made a recommendation as to an independent analysis of a group's financial eligibility, as opposed to requiring a corrective action. While not a regulatory obligation, an independent analysis of relevant information supporting the determination to accept a group client constitutes a risk-management tool to ensure appropriate resource allocation to eligible clients, including groups. As such, LSC stands by its recommendation that the program document its independent analysis of a group's financial eligibility.

The second issue involved NLSLA's Financial Eligibility Standards which provide that an applicant whose income is solely derived from government benefits for low-income persons is financially eligible for legal assistance without an independent determination per 45 CFR § 1661.4(c). Although the policy repeats the language contained in the regulation that the government program must have been determined by the NLSLA Board to have financial eligibility standards consistent with those of NLSLA, it does not state whether the Board conducted such analysis and, if so, which specific programs have the same standards. Interviews with program staff revealed that regardless of this provision, a full income and asset screening is conducted. However, if the NLSLA Board intends to keep this provision in the Financial Eligibility Standards, it should determine which benefits programs meet this test and list them in the policy.

NLSLA stated, in its comments to the DR, that its Board of Directors will review and reconsider its policies under 45 CFR § 1611.4(c) and advise LSC of the results by December 31, 2009. The program did note, however, that it generally conducts a full income and asset screening even in the event a client's income is solely derived from a government benefits program for low-income persons.

Finding 4: Case review demonstrated that NLSLA 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.

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.

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have any financial documentation to review. In such instances, staff should document the new status of the group and any future financial information if relevant to continuing eligibility.

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

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

The Financial Eligibility Standards approved by the NLSLA Board of Directors on April 30, 2009, establishes a Standard Asset Limitation of $30,000 for a household of one and $6,000 for each additional household member. Exempt from consideration is the person's principal residence; reasonable equity value in work-related equipment, providing the equipment is presently being used or can reasonably be expected to be used in the future for the purpose of generating income consistent with its market value; all automobiles owned by the family unit; trust funds held on behalf of a minor child in the family unity, providing that the trust has not been created primarily for the purpose of establishing eligibility for services; the case surrender value of any life insurance policy, burial trust, Income Retirement Account, or Keogh Plan; income-producing property, disposition of which is reasonably likely to render the owner dependent upon public welfare; personal and household items; one burial plot per person; trust funds held for educational and medical purposes; health aids; and any non-liquid assets excluded under the SSI, Food Stamp, AFDC, or General Relief programs.

Interviews revealed that staff is generally well-versed with respect to the program asset ceilings and exclusions. However, interviews also evidenced that some staff record excluded assets in the CMS while others only record assets counted toward the program's asset ceiling. This issue was discussed with senior management during the course of the on-site visit. It is strongly recommended that NLSLA staff training on the program's policy for recording assets and ensure consistent application of the policy.

In reference to case review, none of the sampled filed reviewed evidenced non-compliance with the asset eligibility requirements of 45 CFR Part 1611. As such, the program is in compliance with the asset eligibility requirements of this regulation.

In its comments to the DR, NLSLA noted that it will conduct additional staff training on the NLSLA policy for recording assets to assist in ensuring that the policy is consistently applied throughout the program per LSC's recommendation. The program stated that such training would be completed prior to November 1, 2009.

Finding 5: NLSLA is in compliance with the restrictions on service to ineligible aliens set forth in 45 CFR Part 1626. However, the program is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that files lacked required citizenship/alien eligibility documentation.

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 and moreover, such cases cannot be charged to the LSC grant. *See* CSR Handbook (2001 Ed.), ¶ 5.5 and CSR Handbook (2008 Ed.), § 5.5.

Case review revealed some files that failed to evidence proper citizenship/alien eligibility screening. *See*, for example, Case Nos. 654959, a closed 2008 case; 635656, a closed 2008 case; 609924, a closed 2007 case; 444395, a closed 2007 case; and 618741, a closed 2007 case. Case review also evidenced some open cases which evidenced a significant delay between the opening date and the date either a citizenship attestation or documentation of alien eligibility was obtained. *See*, for example, Case Nos. 517926, with a 27 month delay from the start of the case until a citizenship attestation was obtained; 654766, with a 5 month delay; and 297255, with a 63 month delay.

As such, the program is in compliance with the restrictions on service to ineligible aliens set forth in 45 CFR Part 1626. However, the program is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that files lacked required citizenship/alien eligibility documentation.

In addition, two cases violated 45 CFR § 1626.3, which prohibits recipients to provide legal assistance for or on behalf of an ineligible alien. *See* Case Nos. 649331 and 649333. The two cases were part of a series of five housing cases against a California city for relocation expenses because the owner was closing the clients' mobile home park. Two of the plaintiffs were undocumented; however, the NLSLA attorney filed answers on their behalf in the unlawful detainer actions. The answers listed the NLSLA attorney as attorney of record but the filing did not involve a court appearance. According to staff, the clients' ineligibility was identified when the attorney prepared to file affirmative actions for the clients against the city. Program management stated that once the ineligibility was discovered, NLSLA referred the two ineligible individuals to the Los Angeles Center for Law and Justice (LA Center).[9] The affirmative complaint was filed jointly by NLSLA and the LA Center and clearly identified that the LA

[9] Once the ineligibility issue was discovered, the two prior NLSLA cases were correctly closed with "X" to ensure they would not be reported to LSC.

Center represented the two ineligible persons and NLSLA represented the other three clients. Program management noted on-site that the attorney handling the case was a new hire and the error was rectified as soon as it was discovered.

As the assistance to the ineligible persons was not substantial - the answers were drafted using a computerized form and the combined time for the assistance to these two persons was less than two hours – and the NLSLA attorney was newly hired and not fully trained, LSC will limit its corrective action to requiring the program to provide a written communication to all staff regarding the restriction on assistance to ineligible aliens prior to submitting its comments to the Draft Report and include a discussion of 45 CFR Part 1626 as a part of its standard new case handler training.[10] Any communication to staff pursuant to this corrective action should be attached as an exhibit to NLSLA's comments to the Draft Report. In addition, it is recommended that NLSLA provide strict oversight of the activities of its newly hired case handlers until such time as they are fully trained on all LSC regulations and requirements.

The program, in its comments to the DR, noted that a memorandum regarding the restriction on assistance to ineligible aliens was provided to all staff on September 23, 2009. This memorandum was provided as an exhibit to its comments to the DR. In addition, NLSLA indicated that all new case handlers will receive training regarding 45 CFR Part 1626 as a part of their new staff orientation and training.

NLSLA stated that the program provides a day-long training on LSC regulations and requirements once per year for new staff and as a refresher for existing staff. In September 2009, the NLSLA LSC committee developed a new, condensed 2-hour training regarding LSC regulations and requirements that is now presented to new staff as part of their orientation. Supervisors have been instructed that they must monitor the activities of new case handlers until they attend the training, including review of all intakes, prior to case acceptance, for compliance with LSC regulations and requirements.

Finding 6: NLSLA is in substantial compliance with the retainer requirements of 45 CFR § 1611.9.

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

[10] A written communication for the purposes of this and other corrective actions may include a memorandum or e-mail communication to staff.

lack of a retainer does not preclude CSR reporting eligibility. [11] Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

According to staff, NLSLA obtains retainers primarily in the case of extended representation. As the number of files failing to evidence a retainer agreement when required did not indicate a significant pattern of non-compliance, NLSLA is in substantial compliance with 45 CFR §§ 1611.9(a) and (c). *See*, for example, Case Nos. 657722, 656252, 395757, 609924, and 574323.

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 7: NLSLA 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 all files in which they were required.

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

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

As client statements of fact were present in all files in which they were required, the program is in compliance with 45 CFR Part 1636.

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 8: NLSLA is in substantial 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.

Case review revealed no cases outside of program priorities. As such, the program is in compliance with 45 CFR Part 1620.

[11] 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.

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 9: Case review evidenced that NLSLA is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

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

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

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in 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.

Case review revealed some cases within the case sample that contained either no description or an insufficient description of the legal assistance provided. *See*, for example, Case Nos. 583391, a closed 2007 case; 618741, a closed 2007 case; 646507, a closed 2008 case; 642597, a closed 2008 case; 656292, a closed 2009 case; 609688, a closed 2009 case; 656874, a closed 2009; 651835, an open case; and 657081, an open case. As the number of such cases did not rise to a significant pattern of non-compliance, NLSLA is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

There were, however, several instances during case review where the legal assistance provided to the client was difficult to ascertain – even to the NLSLA intermediaries assisting with case review. As discussed with NLSLA management on-site, it is recommended that the program provide additional instruction as to proper documentation of legal advice to case handlers in its various substantive units.

In its comments to the DR, NLSLA stated that it is program policy to have case handlers electronically record in the CMS, at a minimum, the relevant facts of a case and the legal advice or service provided. The program noted that all case handlers will receive a refresher training regarding proper documentation of legal advice and services provided to clients by the end of October 2009.

Finding 10: NLSLA's 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.).

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.

Case review revealed numerous case closing code errors within the selected sample. *See*, for example, Case Nos. 640867, in which evidence in the file supported an L not B closing code; 646527, in which evidence in the file supported a G not an I(a) closing code; 596471, in which evidence in the file supported an L not a B closing code; 645382, in which evidence in the file supported an L not a K closing code; 657622, in which evidence in the file supported a B not an A closing code; 596530, in which evidence in the file supported an L not a B closing code; 656288, in which evidence in the file supported a B not an L closing code; 654024, in which evidence in the file supported an A rather than a K closing code; and 658279, in which evidence in the file supported a B rather than an A closing code.

In particular, program staff evidenced confusion as to the application of closing codes B (Limited Action), G (Negotiated Settlement with Litigation), I(a) (Uncontested Court Decision), K (Other), and L (Extensive Service). This may be the result of a delay in implementation of the new closing codes mandated by the revised CSR Handbook (2008 Ed.). In the course of interviews, NLSLA stated that the program had not adopted the new closing codes of the CSR Handbook (2008 Ed.) until October 2008. That timeframe is far past the January 1, 2008 effective date of the CSR Handbook (2008 Ed.). As a result, the program was out of compliance with the 2008 CSR Handbook for the majority of 2008. In addition, the failure of the program to adopt the new closing codes results in an inaccurate report of the work performed by the program in its 2008 CSR.

As the number of cases with closing code errors was significant, training regarding the correct use of closing codes consistent with Chapter VIII of the CSR Handbook (2008 Ed.) is required. In addition, LSC requested that the program explain its 10-month delay in implementing Chapter VII of the CSR Handbook (2008 Ed.) in its comments to the Draft Report.

The program indicated in its comments to the DR that it agreed that NLSLA can improve its use of case closing codes and noted that training was provided to all staff on the correct use of closing codes during the first half of 2009. Refresher training on closing codes will be provided to all staff by the end of October 2009.

In addition, the program stated it regretted the 10-month delay in implementing the CSR Handbook (2008 Ed.), including the revision of case closing codes. NLSLA explained that the delay occurred because the technology consultant tasked with reprogramming its proprietary CMS system was engaged in other programming efforts required for the County of Los Angeles for the program's Self-Help Center. NLSLA noted that, in retrospect, it should have advised LSC

earlier of its difficulties in timely meeting new CSR coding requirements and sought an extension of time to implement the new codes.

Finding 11: NLSLA requires some improvement with the timely case closure requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3, particularly in reference to its open case review methodology.

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).[12] 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).

According to staff interviews, case handlers are capable of generating open case lists for review for dormancy. Supervising attorneys stated that they reviewed open case lists by case handler from once a month to once a quarter. Case review, however, identified both untimely and dormant cases *See*, for example, untimely closed Case Nos. 614617; 580788; 651821; 642091; and 520270. In addition, several dormant cases were discovered within the case sample, many of which had been open for several years. *See*, for example, Case Nos. 517555; 558653; 559607; 517555; 549282; and 524923.

The above-referenced cases demonstrate that the open case review system used by NLSLA has not succeeded in fully identifying all inactive open files, leading to both dormancy and untimely case closure. Given the versatility of the program's CMS, management was encouraged to generate reports by using additional or different criteria than what is currently in use. Specific methods to more effectively screen open cases lists were discussed with program management, including use of an open case report that searches for all files in which there have been no time charges for the past six months. Such a report would identify cases of both current and former

[12] 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).

staff and would also include any computer glitch cases inadvertently re-opened by the CMS.[13] It is recommended that NLSLA adopt a revised open case review procedure to be conducted at least every six months in order to more effectively identify dormant or inactive files. Any such cases should be deselected so that they are excluded from current or future CSRs. In addition, it is recommended that the program staff is provided with additional training regarding timely case closure parameters.

In a related issue affecting the program's open case lists, staff noted that during and after recent CMS changes that NLSLA experienced some computer issues whereby the status or other information regarding a case appears to have been randomly altered by the computer. Several staff consistently referred to the computer's changing of certain case records as a "computer glitch" issue. Case No. 555468 may demonstrate a CMS issue of the type referenced by staff. This case, opened in November 2006, was incorrectly on the open case list. A related client file (with a different case number) evidenced that, what appears to be, the identical case was properly closed in December 2007. When the staff attempted to locate a file for the second case, it did not appear to exist, leaving only the computer-generated intake and case notes. As the two cases appear to be similar, the intermediary stated that the second file appears to simply be a duplicate generated through the computer. The intermediary planned to close the second file with a deselect code. The program may want to further investigate this issue as it affects its open case lists.

In its comments to the DR, NLSLA stated that it had made changes to its CMS to screen cases that have been inactive for specified periods of time. Its system can now generate open case reports that identify all files for which there have been no time charges or noted entered for a specified period of time. NLSLA plans to run such reports every 6 months, beginning in September 2009, and task supervisors with reviewing the open case reports and following-up with staff to determine the cause of the inactivity and to remedy the issue if warranted. As explained by the program, true dormant cases will be deselected so that they are excluded from current or future CSRs.

Finding 12: NLSLA is out of compliance with CSR Handbook (2008 Ed.), § 4.4 as it is incorrectly reporting cases served by staff of a separate entity operating under a non-LSC grant in its Case Service Reports.

The CSR Handbook (2008 Ed.), § 4.4 "Inclusion of Certain Subrecipient Cases" states:

> Recipients shall report only cases closed by subrecipients as defined by 45 CFR §1627.2 that are supported in whole or in part with LSC funds. Organizations receiving transfers of only non-LSC funds from a recipient are not subrecipients under 45 CFR Part 1627 and none of their cases may be reported to LSC. However, recipients using non-LSC funds to meet the LSC PAI requirement through arrangements with another organization

[13] One intermediary who is a program manager stated that they run periodic case lists according to the names of the persons currently working in their unit. It is necessary for NLSLA to have a more complete open case compilation, to include cases that may still be open from prior staff.

may report the non-LSC funded PAI cases closed by that organization if such cases meet the definitions and requirements of this Handbook.

Case review revealed several cases on LSC-eligible lists that included legal assistance provided by staff of another non-LSC legal services provider. *See*, for example, Case No. 651538, a closed 2008 case reported in the program's 2008 CSR. NLSLA staff indicated that certain California endowment funding was used to fund a resource arrangement between the program and other partner agencies and, in this case, money was granted to allow NLSLA use of the staff of the Mental Health Advocacy Services ("MHAS") to provide services to NLSLA clients. Staff further noted that there is a Memorandum of Understanding ("MOU") between NLSLA and MHAS that governs these cases referred to MHAS.

It was explained that under this arrangement, MHAS provides legal advice, if applicable, and then communicates with NLSLA regarding the conclusion of the case. The program then closes the file as an NLSLA case and includes it in its CSRs. In Case No. 651538, for example, the written communication received from MHAS clearly stated that the client was provided with "legal information". As the provision of legal information is not reportable in the CSR, this case was incorrectly closed and reported as an "A" in 2008. However, staff indicated that other cases handled in 2008 did receive legal advice from MHAS and would have been reported in the program's CSR.

As noted above, CSR Handbook (2008 Ed.), § 4.4 does not allow the reporting of cases in which the legal advice is provided by *staff of a non-LSC program* and which are *paid with non-LSC funds*. As description of the arrangement between NLSLA and MHAS clearly fits these elements, such cases should not be reported in any program CSRs.

The managing attorney indicated that this funding grant term ceased in February 2009 and stated that the endowment did not continue these grants for a new term. As such, the incorrectly reported cases appear to be limited to the 2008 CSR but could affect future CSRs depending on the number of open cases that might be closed in 2009 and future years. NLSLA should provide an analysis of how many MHAS cases remain open in its comments to the Draft Report. Corrective action should be taken by NLSLA to deselect any MHAS cases in which the legal advice was provided solely by MHAS staff from the 2009 CSR and any future CSRs.

In its comments to the DR, NLSLA noted that the MOU with MHAS expired in February 2009, the above issue is moot and that it will voluntarily exclude any remaining cases where legal advice was solely provided by MHAS from its CSR reports to LSC. The program stated that as of October 1, 2009, there were no MHAS cases that remained open in the NLSLA CMS. The program contends, however, that the above-referenced cases should be counted as staff cases or, alternatively, as PAI cases.

As CSR Handbook (2008 Ed.), § 4.4 does not allow the reporting of cases in which the legal advice is provided by *staff of a non-LSC program* and which are *paid with non-LSC funds*, it is clear that MHAS cases should not be reported to LSC. In addition, there is no LSC-approved subgrant which would allow for the reporting of such cases. Further, such cases do not involve

private attorneys as contemplated by 45 CFR Part 1614 and, as such, cannot be included in as a PAI allocation cost.

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.

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

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

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

Case review revealed some duplicate files within the case sample. The number of duplicate files is expected to decline as a new flag for duplicate cases was added to the CMS in 2009.[14] *See*, for example, Case Nos. 657804, a closed 2009 case; 652532, an open case; 658407, an open case; 613075, a closed 2007 case; and 585041, a closed 2007 case. As the number of duplicate files did not evidence a significant pattern of non-compliance, the program is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2.

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

[14] NLSLA recently revised its CMS to automatically flag potential duplicate cases when the client's name and birthday are entered. Intake staff will now easily be able to identify potential duplicates prior to creating a new record. Program management noted that staff is monitoring this feature to ensure that it is working correctly. Duplicate cases are to be closed with a December 25 closure date and an X closing code. Cases marked as duplicates will be excluded from CSRs.

Finding 14: 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 grants funds or contributing personnel or equipment to any political party or association, the campaign of any candidate for public or party office, and/or for use in advocating or opposing any ballot measure, initiative, or referendum. *See* 45 CFR Part 1608.

Case review and staff interviews revealed no evidence that NLSLA is involved in such activity. In addition, a limited review of accounting records and documentation for the period of 2007 through March 2009 and interview, with staff disclosed that NLSLA 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).

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 15: 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 sampled files reviewed involved legal assistance with respect to a fee-generating case. Staff indicated that the program would not handle any fee-generating cases unless it was pursuant to the exceptions noted in the regulation.

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 16: A limited review of NLSLA's 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. However, NLSLA's donor letter requires revision to notify contributors of the LSC-related prohibitions and conditions that apply to the funds.

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).

Based on a limited review of the chart of accounts and the detailed general ledger for 2007, specific general ledger accounts for 2008 and through March, 2009, observations of the physical locations of all NLSLA offices, and interviews with staff, NLSLA does not appear to be engaged in any restricted activity which would present 45 CFR Part 1610 compliance issues.

The letter sent by NLSLA as a thank-you to donors, however, does not fully comply with the requirements of 45 CFR § 1610.5 that requires recipients to provide contributors with written notification of the LSC-related prohibitions and conditions which apply to the funds. A sample letter including a paragraph compliant with the regulation was provided on-site as a guide to management. As such, NLSLA is required to revise its donor letter to fully notify contributors of the LSC-related prohibitions and conditions which apply to the funds.

NLSLA, in its comments to the DR, indicated that it would revise its donor thank-you letter to provide a written notification of LSC prohibitions and conditions as required by 45 CFR § 1610.5.

Finding 17: NLSLA is in non-compliance with the requirements of 45 CFR Part 1614 (Private attorney involvement) due to its lack of a formal PAI Plan. In addition, review of financial documents and staff interviews evidenced inconsistent accounting of PAI-related activities.

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).

A review of NLSLA's PAI component revealed that NLSLA does not engage in the traditional PAI model of referring cases directly to *pro bono* attorneys or contracting with private attorneys for one-on-one direct legal assistance to eligible clients. Instead, NLSLA enters into agreements with a single private attorney, legal firm, or other legal services provider to co-counsel cases. In addition, the program counts the assistance of private attorneys in certain clinics and in other activities towards its PAI requirement. The following compliance issues were identified with NLSLA's PAI component and the NLSLA response to the DR addressed the issues noted:

PAI Plan

NLSLA does not have a PAI Plan and is out of compliance with the requirements of 45 CFR § 1614.4(a). As noted above, programs are required to create a PAI Plan which takes into account, among other considerations, the legal needs of eligible clients in the geographical area and delivery mechanisms available for private attorneys in the service area to meet those legal needs. As the process to create a PAI Plan requires the involvement of the private bar, bar associations, and the client community, it assists in identifying ways to implement an efficient and effective private attorney involvement effort, including addressing difficulties in attorney recruitment.

NLSLA has Private Attorney Involvement Policies and Procedures but they do not meet the regulatory requirements of a PAI Plan. In order to correct this compliance issue, NLSLA must submit a PAI Plan to LSC no later than 2 months from receipt of the Final Report. In the event the program has already completed a PAI Plan, LSC requested that it be submitted with its comments to the Draft Report.

In its comments to the DR, NLSLA indicated that it would provide its written PAI Plan no later than 2 months after receipt of the Final Report.

Inaccurate PAI Case Lists

The number of PAI cases reported in the program's CSRs was found to be unreliable as they did not match those in the case lists provided to LSC in advance of the visit. NLSLA management

indicated that accurate tracking of PAI cases was an issue because, until April 2009, the program did not have a field in the CMS to track PAI cases and lists had to be prepared manually. Specifically, the LSC grantee profile reflects that in 2006 NLSLA reported 0 PAI cases, though in preparation for the LSC visit, NLSLA compiled a list reflecting four closed 2006 cases. In 2007, the grantee profile reflects that the program reported nine PAI cases, though the cases lists for the on-site visit reflected five closed 2007 PAI cases including two cases which were closed with non-LSC reportable codes. In addition, PAI cases closed in 2008 were included on the open PAI case lists which resulted in the cases being selected for review twice. This issue appears to have been remedied with the addition of a PAI Open Date field in the CMS but it is recommended that NLSLA monitor the use of this field to ensure future accuracy.

NLSLA, in its comments to the Draft Report, noted that it added a new PAI open date field to its CMS in April 2009 which allowed for more accurate tracking of PAI cases. The program indicated that it will continue to monitor use of the new field.

Allocation of Time in Co-Counseled Cases

As noted above, NLSLA enters into agreements with a single private attorney, legal firm, or other legal services provider to co-counsel cases. Such activities are permissible pursuant to 45 CFR Part 1614. Some cases are co-counseled *pro bono* with single private attorneys, other cases are handled in conjunction with law firms, and other cases are co-counseled with another legal services entity. In some instances, NLSLA and the other legal services entity represent eligible clients together while in others, the co-counsel represents a client(s) who is not LSC-eligible in a single complaint. In all of the cases reviewed, agreements which clearly set forth the relationships of the clients to the co-counsel, division of responsibilities and case costs, and appropriate attorneys' fees language were included. Similarly, no compliance concerns were identified in pleadings.

Interviews and case review revealed that NLSLA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight of the PAI case files. Because these cases are co-counseled with an NLSLA case handler, they are subject to the program's uniform internal case management and supervisory oversight procedures. All of the cases reviewed included lengthy notes in the case managements system as well as copies of all filings.

Financial documents revealed that NLSLA allocated $89,144 for time spent on 13 co-counseled cases toward its 2008 PAI requirement. Of this time, $72,328 was time allocated to a single case involving neighbors seeking to reinstate Section 8 vouchers and eliminate unlawful searches. *See* Case No. 441052, closed in 2009. A co-counsel agreement with a private attorney was entered into regarding this case and a companion case in order to assist in the representation of two LSC-eligible clients. *See also* Case No. 441036, closed in 2009. NLSLA staff reported that numerous hours were spent on these cases which were open for four years until post-settlement issues were resolved in April 2009. However, a review of the time charged to PAI for this case revealed that an overwhelming majority of the hours ascribed to PAI were NLSLA staff hours spent on the case.

45 CFR § 1614.3(a) requires recipients to include direct delivery of legal assistance to eligible clients in its PAI activities. While co-counseling with private attorneys is a permissible activity towards this end, there was some question whether it was appropriate to charge all time on a co-counseled case to PAI when a majority of the time was for work performed by NLSLA staff. As noted above, 45 CFR Part 1614 allows the use of private attorneys in co-counsel relationships but does not speak to the allocation of staff costs. In addition, the CSR Handbook (2008 Ed.), ¶ 10.1(b)(3) states that a recipient may close cases co-counseled with private attorneys as PAI but it does not define how to allocate costs. However, as the vast majority of time allocated to the above-referenced PAI cases appeared to be staff time, NLSLA was requested to provide additional information regarding the private attorneys' time in the cases.

NLSLA provided additional information regarding this issue via correspondence dated December 3, 2009 and affixed as an exhibit hereto. In its comments, NLSLA noted that the appearance that a majority of time allocated in the above-referenced PAI cases was directly related to the program's practice of only calculating the amount of donated private attorney services in its annual financial audit. As a result, NLSLA staff reviewing the case files and associated time records in the course of the on-site review had no record of the private attorney time related to the cases. According to NLSLA management's review of its 2008 audit, the private attorneys co-counseling in the cases billed 899.20 hours in 2008.

As NLSLA's management has demonstrated that the above-referenced PAI cases were not solely handled by its staff but included a significant investment of private attorney time, LSC has no continuing issue regarding the program's co-counseled PAI cases. The program, however, further indicated its comments that it had "thought more about the general value of our attorneys regularly tracking private attorney time on PAI cases" and had prospectively changed its standard PAI co-counseling agreement to require private attorneys to regularly disclose their time billed on such cases to NLSLA. As such, information regarding private attorney time will be more readily available as a standard program practice.

Use of Private Attorneys in Unscreened Clinics

An interview with the Directing Attorney of the *Pro Bono* Project reveals that the program is currently working on several PAI initiatives with the goal of recruiting attorneys who will accept individual cases. NLSLA staff noted that recruitment of *pro bono* attorneys in Los Angeles County is difficult because of other LSC-funded recipients and non-LSC legal services programs in the immediate service area. In order to counter the difficulty in direct referral of PAI cases, the program stated that it has had measured success recruiting private attorneys for legal information clinics and other activities which do not require them to establish an attorney-client relationship.

NLSLA utilizes private attorneys in a variety of clinics including the Domestic Violence Courthouse Clinics, Workers' Rights Self Help Centers, a Bankruptcy Self-Help Desk and Immigration and Naturalization Clinics. However, clinic attendees are not fully screened for LSC eligibility nor are they considered to be NLSLA clients. As 45 CFR Part 1614 requires the use of private attorneys in the delivery of legal services to eligible clients, the program's current methodology of allocating unscreened clinic costs to its PAI requirement is non-compliant. *See* OLA External Opinion # EX-2008-1001. In 2008, NLSLA allocated $164,935 in clinic staff time

and the value of support provided by private attorneys at the clinics towards its PAI allocations.[15]
It was requested that NLSLA respond to the concerns regarding allocation of unscreened clinic time to its PAI expenditures in its comments to the Draft Report.

In its comments to the DR, NLSLA stated that it "strongly disagreed with LSC's arguments and conclusions concerning its inclusion of expenses associated with its various self-help clinics as part of the program's 2008 PAI calculation." The program indicated that its touchstone for determining whether a program activity is "countable" as a PAI expense is whether it is focused on securing pro bono private bar assistance as a substitute for assistance provided by program staff. According to NLSLA, "[a]s long as the involvement of private pro-bono lawyers helps leverage program resources resulting in greater levels of legal assistance to the client community it is a legitimate PAI activity."

The program maintained that where a pro bono private attorney is undertaking training, providing legal information as a community forum, drafting community education materials for distribution, or participating in a non-representational self-help clinic, that private attorney time counts for PAI purposes without pre-screening for LSC eligibility because LSC-funded advocates providing those same services are not required to pre-screen clients for LSC eligibility. NLSLA suggested that "if this were not true, LSC policies would result in the anomalous situation of private attorneys having to comply with more onerous client screening requirements than staff attorneys paid directly with LSC funds who perform those same functions."

In its comments to the DR, NLSLA also stated that:

> The Draft Report's reliance on OLA External Opinion #EX-2008-1001, which was requested by Ohio State Legal Services Association, as support for its conclusions that the use of NLS-LA self-help clinics as PAI expense [*sic*] is inappropriate for several reasons. First, External Opinions only provide a legal opinion applicable to the requesting organization and for the particular activity that was the subject of the request. External OLA Opinions are not the official pronouncements of LSC rules or policy; nor, can they create new program operational requirements. They are not a substitute for the LSC regulatory process.
>
> Second, the factual circumstances of the Ohio clinics discussed in OLA External Opinion #EX-2008-1001 are quite different that the self-help clinics of NLSLA. The purpose of the Ohio clinics appear to be the provision of individual legal representation or advice

[15] Attorney participation at the various clinics is not entirely consistent. According to interviews, at some times there are 1-3 private attorneys at each clinic while at other times there are none. It is unclear whether NLSLA allocates the full cost of the clinics to PAI, including staff time (even when a private attorney does not attend), or only the value of the time spent by private attorneys when they attend the clinics. Regardless, the costs are ineligible for allocation to PAI. In 2008, NLSLA allocated $68,379 of DV clinic time toward PAI. Program management stated that in light of the above-referenced OLA opinion, senior management believed this clinic was compliant because clinic attendees are eligible pursuant to the Kennedy Amendment. However, again, costs for this clinic is not eligible for NLSLA's PAI requirement because the attendees participating in the clinic are not fully screened for financial eligibility and they are not accepted as clients of the program.

> where NLS-LA agrees screening of LSC eligibility is required by both program staff attorneys and by volunteer private attorneys in order to count that activity for PAI purposes. On the other hand, the NLS-LA clinics are only designed to provide general information to clients and to assist with self-help actions, circumstances where LSC rules do not require individual eligibility determinations when those activities are preformed [*sic*] by in-house private attorneys and similarly do not require eligibility screening when performed by pro-bono private attorneys. Indeed, under the NLS-LA model, persons who ultimately need individual help are screened for LSC eligibility after the clinics and then provided that help by either NLS-LS staff attorneys or pro bono private attorneys.

In additional correspondence to LSC dated December 3, 2009, NLSLA further articulated that one of its self-help clinics, the Workers Rights Clinic, involves a two-step intake process that includes LSC eligibility screening. According to the December 3, 2009 correspondence, in the initial contact with the clinic attendee, the program first sorts out what type of assistance is appropriate and then may proceed to a "Secondary Triage" in which individuals with cases that may be appropriate for representation are screened for eligibility before they are represented by NLSLA or referred to a PAI attorney.

Contrary to NLSLA's position, OLA External Opinions are official pronouncements of LSC policy. As such, they provide guidance regarding similarly situated programs. While the configuration of the Ohio clinics is not precisely the same as the NLSLA self-help clinics, OLA External Opinion #EX-2008-1001 turns on the concept that 45 CFR Part 1614 is intended to involve private attorneys in the delivery of legal assistance to "*eligible clients*." Indeed, the regulation refers to the provision of legal services and assistance to eligible client in "nearly every section and subsection of the regulation", including 45 CFR § 1614.3(1), which discusses activities involving community education and training. [16] According to staff interviews, NLSLA clinics do not provide individualized legal assistance but do provide legal information in the self-help context. Staff interviews revealed that clinic attendees are not fully screened for eligibility (income, assets, and citizenship/alien eligibility) and not considered as NLSLA clients unless identified as having legal issues appropriate for actual NLSLA representation. At that point, the clinic attendee is accepted for NLSLA representation and is considered a client of the program. Clearly, LSC has no issues with the characterization of the latter group of screened and accepted clients as PAI cases provided that the legal assistance supplied is provided by a private attorney. It is the former group of unscreened (or not fully screened) clinic attendees who are not considered clients of the program that cannot be counted towards the program's PAI requirement. In order to count clinic activities towards PAI requirements, programs must screen applicants for eligibility, determine they are eligible, and consider them clients of the program. *See* OLA External Opinion #EX-2008-1001. NLSLA may continue to engage in its self-help clinic activities but may not include them to satisfy its PAI requirement unless such conditions are met.

While LSC agrees that the emphasis on eligible clients in 45 CFR Part 1614 may lead to an unintended consequence of creating a situation where private attorneys have to comply with more onerous client screening requirements than staff attorneys, LSC policy must coincide with

[16] *See* OLA External Opinion #EX-2008-1001 p. 2.

its regulatory authority. As such, NLSLA is directed to cease counting such activities towards its PAI allocation for FY 2009 and all future PAI allocations.

Use of Private Attorneys in Other Activities

NLSLA has allocated funds related to several taskforces towards its PAI requirement. In 2008, the program allocated $5,681 toward PAI for activities listed as California DSS CalWORKS Meetings – WTF Division of CDSS. The program advised that this is a Department of Social Services Welfare to Work fraud division task force to discuss how rules or proposed rules of programs impact clients. NLSLA's interest was to ensure that the rules did not infringe upon the rights of domestic violence victims. In addition, NLSLA allocated $2,649 toward PAI for activities listed as DV Grant Matters in 2008. Program management stated that an NLSLA staff member sits on a Domestic Violence Council to ensure that the rights of domestic violence victims are not negatively impacted by county rules. NLSLA also allocated $9,728 toward PAI activities listed as DPSS DV Steering Committee in 2008. The Deputy Director stated that this is another task force with the same type of goals.

According to interviews, staff time and expenses (i.e., mileage) for these three task forces was allocated to PAI because private attorneys sit on the task forces. NLSLA management stated that some of the private attorneys serving on these task forces were recruited by the NLSLA attorney who sits on these task forces. It is questionable whether all or part of these activities is appropriate for allocation toward the PAI requirement. It was requested that NLSLA respond to concerns regarding allocation of certain taskforce activities to its PAI expenditures in its comments to the Draft Report.

In its comments to the DR, NLSLA indicated that due to the time it would take to respond to the above concerns and because the relevant costs do not appear critical in determining the program's compliance with its 2008 PAI cost allocation, the program has voluntarily deleted the above-referenced costs without conceding that they were inappropriate. NLSLA provided a copy of its Draft Revised Calculations as an exhibit to its comments to the DR.

The Audited Financial Statement for 2008 did report separate expenditures dedicated to the PAI effort as required by 45 CFR § 1614.4(e)(2). A separate statement "schedule of Notes to Financial Statements, Private Attorney Involvement" reported a total of PAI expenditures of $700,749 which translates to 15.0% of the total basic field grant ($4,667,690), complying with the 12.5% requirement. However, based on the above, it appears that some of the expenditures relating to staff involved in the clinics and matters charged to as a PAI activity do not involve private attorneys and, as such, the 15% PAI expenditure is questionable. In addition, the program is clearly out of compliance with 45 CFR § 1614.4(a) as no formal PAI Plan is in place. As such, NLSLA is required to develop a budget which does not include the allocation of ineligible costs toward its PAI requirement, revise its 2008 PAI allocation and request a waiver from LSC if necessary, and restructure its PAI component to accurately account for appropriately characterized PAI activities.

Finding 18: Limited document review evidenced that NLSLA 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 detailed general ledger for 2007, 2008 and through March 2009 disclosed that NLSLA is in compliance with 45 CFR § 1627.4(a).

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 19: A limited review of NLSLA's payable accounts using LSC funds disclosed no exceptions. However, it is recommended that the program develop a policy setting limits for meals and lodging.

A limited review of the program's payable accounts for 2008 and 2009 revealed that supporting documentation is properly reviewed and approved. However, the review disclosed that the program does not have limits for meals and lodging expenses. Although the review did not reveal any apparent excessive charges for such expenses, it is recommended that NLSLA develop a policy setting limits for meals and lodging to support its risk-management practices.

In its comments to the DR, NLSLA agreed with the above recommendation regarding limits for meals and lodging. The program noted that it had previously discussed the issue internally and will refer it to the Finance Committee of its Board of Directors as creation of such policy is within their jurisdiction.

Finding 20: Staff interviews and limited document review evidenced that case handlers are keeping time in accordance 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 NLSLA and LSC rules and regulations. *See* 45 CFR § 1635.1.

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

The review of two timekeeping records for NLSLA case handlers (selected from all NLSLA offices) for the pay period ending March 31, 2009 disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter or supporting activity is recorded in substantial compliance with 45 CFR §§ 1635.3(b) and (c).

A review of 15 actual case files against their corresponding timekeeping records to determine the accuracy of the time reported when comparing to the amount of work performed as disclosed in the case file evidenced that the two records compare favorably. In addition, an interview with the program's CFO disclosed that there are no part-time case handlers working for an organization that engages in restricted activities in compliance with 45 CFR § 1635.3(d).

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 21: NLSLA is in non-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 three files that included pleadings with requests for attorneys' fees. The first two cases were part of a series of five housing cases which involved filing answers to unlawful detainers. The NLSLA attorney filed answers to unlawful detainers for two of the program's clients and checked the box on the pleading form that requested attorneys' fees. Program management noted on-site that the attorney involved in filing the pleadings was a new

attorney who had not been fully trained. *See* Case Nos. 649331 and 649333, both closed 2008 cases. The two cases had other compliance issues, as discussed in Finding 5 above. In addition, these cases were incorrectly coded as PAI cases and incorrectly reported in the 2008 CSR.

The third case, open Case No. 589832, included a petition form filed on behalf of the program's client in which a box requesting costs and attorneys' fees was checked. NLSLA staff explained that the program affirmatively checks this box on these paternity petitions for costs and attorneys' fees, but that the program will then not ask for fees at the end of the case. Program staff noted that the motivation for checking this box is to protect the client's interest to obtain costs and fees.[17] However, as the exceptions of 45 CFR § 1642.4 did not apply to this case, the claim of fees noted in this case, and any other similar pleadings filed by NLSLA, are in contravention of 45 CFR Part 1642.

As three cases were discovered with requests for attorneys' fees, NLSLA is in non-compliance with 45 CFR Part 1642. NLSLA is required to provide a written communication to all staff regarding the restriction regarding requests for attorneys' fees in NLSLA pleadings, including form pleadings, prior to submitting its comments to the Draft Report. Any communication to staff pursuant to this corrective action should be attached as an exhibit to NLSLA's comments to the Draft Report. In addition, the program must include a discussion of 45 CFR Part 1642 as a part of its standard new case handler training.

In reference to review of fiscal records for compliance with 45 CFR Part 1642, a limited review of the NLSLA fiscal records and an interview with the CFO evidenced that there were no attorney fees awarded, collected, and retained for cases serviced directly by NLSLA.

In its comments to the DR, the program stated that a memorandum regarding the restriction on request for attorneys' fees in NLSLA pleadings, including form pleadings, was provided to all staff on September 14, 2009. The memorandum was attached as an exhibit to the program's comments to the DR. In addition, it was noted that all new case handlers will be provided with training on 45 CFR Part 1642 as part of their staff orientation.

Finding 22: Case review, staff interviews, and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

[17] It appears that this protection of the client's interest would be relevant if the program decided to cease representing the client and the client wished to seek other legal representation. However, if the program has committed to completing the representation (such as in the client retainer agreement), it is unclear why the need for fees and costs needs to be protected, as there will be no anticipated change in attorney representation for that petition.

governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

Neither sampled files nor interviews with program management evidenced any lobbying or other prohibited activities.

NLSLA stated that it had 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 Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Program staff indicated that the NLSLA does not take such cases.

NLSLA stated that it had 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 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).[18]

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

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

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

Finding 25: 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 revealed no NLSLA participation in litigation related to redistricting. In addition, staff noted that the program does not participate in redistricting cases.

NLSLA stated that it had 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 1633 (Restriction on representation in certain eviction proceedings).**

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

Staff interviews and a review of sampled files evidenced that NLSLA is not involved in the defense of any such eviction proceeding.

NLSLA stated that it had 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 1637 (Representation of prisoners).**

Recipients may not participate in any civil litigation on behalf of a person incarcerated in a federal, state, or local prison, whether as plaintiff or defendant; nor may a recipient participate on behalf of such incarcerated person in any administrative proceeding challenging the condition of the incarceration. *See* 45 CFR § 1637.3.

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

NLSLA stated that it had 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 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.[19] This restriction has been contained in all subsequent appropriations acts.[20] 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 sampled files indicated program involvement in such activity.

NLSLA stated that it had 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 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

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

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

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

Finding 30: 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,

[19] *See* Section 504(a)(18).
[20] *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).

Section 504 provides that none of the funds appropriated to LSC may be used to provide financial assistance to any person or entity that participates in any litigation with respect to abortion.

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

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

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

NLSLA stated that it had no remarks regarding this finding in its comments to the DR.

IV. RECOMMENDATIONS[21]

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

1. Provide staff training on the program's policy for recording assets and ensure consistent application of the policy.

> NLSLA stated in its comments to the DR that the program had made a number of edits to its CMS in order to automate its asset policy, including the removal of excluded assets as selectable options in the eligibility section of the intake. In addition, if non-excluded assets exceed the asset limit, the CMS will direct the case handler to a section used to determine whether or not a waiver applies. The program also noted in its comments to the DR that all staff will be trained regarding NLSLA's policy for recording assets by the end of October 2009 and that supervisors will be required to review asset information on all intakes for two months following the training to ensure consistent application of the policy.

2. Provide staff training in reference to the proper documentation of over-income clients accepted for services in accordance with the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4).

> In its comments to the DR, NLSLA noted that all staff will be re-trained regarding NLSLA's policy for proper documentation of over-income clients accepted for service by the end of October 2009, including how to effectively utilize the recent changes to the CMS noted above.

3. Document its independent analysis of a group's financial eligibility in the course of eligibility screening.

> In its comments to the DR, NLSLA "respectfully disagrees with the Draft Report's underlying claim that the Federal Register's Preamble discussion about an independent analysis of group LSC eligibility creates a regulatory obligation on programs." The Draft Report, however, only makes a recommendation as to an independent analysis of a group's financial eligibility, as opposed to requiring a corrective action. While not a regulatory obligation, an independent analysis of relevant information supporting the determination to accept a group client constitutes a risk-management tool to ensure appropriate resource allocation to eligible clients, including groups. As such, LSC stands by its recommendation that the program document its independent analysis of a group's financial eligibility.

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

4. Provide strict oversight of the activities of its newly hired case handlers until such time as they are fully trained on all LSC regulations and requirements.

> NLSLA stated that the program provides a day-long training on LSC regulations and requirements once per year for new staff and as a refresher for existing staff. In September 2009, the NLSLA LSC committee developed a new, condensed 2-hour training regarding LSC regulations and requirements that is now presented to new staff as part of their orientation. Supervisors have been instructed that they must monitor the activities of new case handlers until they attend the training, including review of all intakes, prior to case acceptance, for compliance with LSC regulations and requirements.

5. Provide additional instruction as to proper documentation of legal advice to case handlers in its various substantive units.

> In its comments to the DR, NLSLA stated that it is program policy to have case handlers electronically record in the CMS, at a minimum, the relevant facts of a case and the legal advice or service provided. The program noted that all case handlers will receive a refresher training regarding proper documentation of legal advice and services provided to clients by the end of October 2009.

6. Adopt a revised open case review procedure to be conducted at least every six months in order to more effectively identify dormant or inactive files. Any cases so identified should be deselected so that they are excluded from current or future CSRs. In addition, it is recommended that the program staff is provided with additional training regarding timely case closure parameters.

> In its comments to the DR, NLSLA stated that it had made changes to its CMS to screen cases that have been inactive for specified periods of time. Its system can now generate open case reports that identify all files for which there have been no time charges or noted entered for a specified period of time. NLSLA plans to run such reports every 6 months, beginning in September 2009, and task supervisors with reviewing the open case reports and following-up with staff to determine the cause of the inactivity and to remedy the issue if warranted. As explained by the program, true dormant cases will be deselected so that they are excluded from current or future CSRs.

7. Develop a policy setting limits for meals and lodging to support its risk-management practices.

> In its comments to the DR, NLSLA agreed with the above recommendation regarding limits for meals and lodging. The program noted that it had previously discussed the issue internally and will refer it to the Finance Committee of its Board of Directors as creation of such policy is within their jurisdiction.

8. Ensure that all PAI cases have been properly re-coded and that the CMS is accurately generating PAI case lists.

NLSLA, in its comments to the Draft Report, noted that it added a new PAI open date field to its CMS in April 2009 which allowed for more accurate tracking of PAI cases. The program indicated that it will continue to monitor use of the new field.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Create a method to ensure that a specific over-income case acceptance factor is detailed in either the case file or the CMS, including a description of any factor falling under the heading of "other".

> In its comments to the DR, the program indicated that its CMS had been edited to ensure that over-income case acceptance factors are appropriately detailed. As a result, when the "other" box is now selected, the CMS prompts the case handler to explain in the blank space immediately next to it what factors are being considered. The intake will not save as complete until this mandatory field is completed. In addition, changes have also been made to the CMS to ensure that the "other" factor(s) described will print out on a hard copy of the intake form. Case handlers have also been directed to further describe any specifics of factors selected in the case notes. For example, if the factor "seeking government benefits" box is checked, the case notes may reflect a client is applying for CalWorks.

2. Determine which benefits programs meet the program's Financial Eligibility Standards criteria and list them in the policy.

> NLSLA stated in its comments to the DR that its Board of Directors will review and reconsider its policies under 45 CFR § 1611.4(c) and advise LSC of the results by December 31, 2009.

3. Provide a written communication to all staff regarding the restriction on assistance to ineligible aliens prior to submitting its comments to the Draft Report and include a discussion of 45 CFR Part 1626 as a part of its standard new case handler training. Any communication to staff pursuant to this corrective action should be attached as an exhibit to NLSLA's comments to the Draft Report.

> The program, in its comments to the DR, noted that a memorandum regarding the restriction on assistance to ineligible aliens was provided to all staff on September 23, 2009. This memorandum was provided as an exhibit to its comments to the DR. In addition, NLSLA indicated that all new case handlers will receive training regarding 45 CFR Part 1626 as a part of their new staff orientation and training.

4. Provide training regarding the correct use of closing codes consistent with Chapter VIII of the CSR Handbook (2008 Ed.) required. In addition, LSC requests that the program explain its 10-month delay in implementing Chapter VII of the CSR Handbook (2008 Ed.) in its comments to the Draft Report.

> The program indicated in its comments to the DR that it agreed that NLSLA can improve its use of case closing codes and noted that training was provided to all staff on the

correct use of closing codes during the first half of 2009. Refresher training on closing codes will be provided to all staff by the end of October 2009.

In addition, the program stated it regretted the 10-month delay in implementing the CSR Handbook (2008 Ed.), including the revision of case closing codes. NLSLA explained that the delay occurred because the technology consultant tasked with reprogramming its proprietary CMS system was engaged in other programming efforts required for the County of Los Angeles for the program's Self-Help Center. NLSLA noted that, in retrospect, it should have advised LSC earlier of its difficulties in timely meeting new CSR coding requirements and sought an extension of time to implement the new codes.

5. Deselect any MHAS cases in which the legal advice was provided solely by MHAS staff from the 2009 CSR and any future CSRs.

In its comments to the DR, NLSLA noted that the MOU with MHAS expired in February 2009, the above issue is moot and that it will voluntarily exclude any remaining cases where legal advice was solely provided by MHAS from its CSR reports to LSC. The program stated that as of October 1, 2009, there were no MHAS cases that remained open in the NLSLA CMS. The program contends, however, that the above-referenced cases should be counted as staff cases or, alternatively, as PAI cases.

As CSR Handbook (2008 Ed.) § 4.4 does not allow the reporting of cases in which the legal advice is provided by *staff of a non-LSC program* and which are *paid with non-LSC funds*, it is clear that MHAS cases should not be reported to LSC. In addition, there is no LSC-approved subgrant which would allow for the reporting of such cases. Further, such cases do not involve private attorneys as contemplated by 45 CFR Part 1614 and, as such, cannot be included in as a PAI allocation cost.

6. Revise its donor letter to fully notify contributors of the LSC-related prohibitions and conditions which apply to the funds.

NLSLA, in its comments to the DR, indicated that it would revise its donor thank-you letter to provide a written notification of LSC prohibitions and conditions as required by 45 CFR § 1610.5.

7. Submit a PAI Plan to LSC no later than two (2) months from receipt of LSC's Final Report. In the event the program has already completed a PAI Plan, LSC requests that it be submitted with its comments to the Draft Report.

In its comments to the DR, NLSLA indicated that it would provide its written PAI Plan no later than 2 months after receipt of the Final Report.

8. Develop a budget which does not include the allocation of ineligible costs toward its PAI requirement, revise its 2008 PAI allocation and request a waiver from LSC if necessary, and restructure its PAI component to accurately account for appropriately characterized PAI activities.

In its comments to the DR, NLSLA stated that it "strongly disagreed with LSC's arguments and conclusions concerning its inclusion of expenses associated with its various self-help clinics as part of the program's 2008 PAI calculation." The program maintained that where a pro bono private attorney is undertaking training, providing legal information as a community forum, drafting community education materials for distribution, or participating in a non-representational self-help clinic, that private attorney time counts for PAI purposes without pre-screening for LSC eligibility because LSC-funded advocates providing those same services are not required to pre-screen clients for LSC eligibility. NLSLA suggested that "if this were not true, LSC policies would result in the anomalous situation of private attorneys having to comply with more onerous client screening requirements than staff attorneys paid directly with LSC funds who perform those same functions." The program also questioned OCE's reliance on OLA External Opinion #EX-2008-1001 and noted its factual circumstances were different than those involved in that opinion. In additional correspondence to LSC dated December 3, 2009, NLSLA further articulated that one of its self-help clinics, the Workers Rights Clinic, involves a two-step intake process that includes LSC eligibility screening for individuals with cases that may be appropriate for representation by NLSLA or referral to a PAI attorney.

Contrary to NLSLA's position, OLA External Opinions are official pronouncements of LSC policy. As such, they provide guidance regarding similarly situated programs. While the configuration of the Ohio clinics is not precisely the same as the NLSLA self-help clinics, OLA External Opinion #EX-2008-1001 turns on the concept that 45 CFR Part 1614 is intended to involve private attorneys in the delivery of legal assistance to "*eligible clients*." Indeed, the regulation refers to the provision of legal services and assistance to eligible client in "nearly every section and subsection of the regulation", including 45 CFR § 1614.3(1), which discusses activities involving community education and training. [22] According to staff interviews, NLSLA clinics do not provide individualized legal assistance but do provide legal information in the self-help context. Staff interviews revealed that clinic attendees are not fully screened for eligibility (income, assets, and citizenship/alien eligibility) and not considered as NLSLA clients unless identified as having legal issues appropriate for actual NLSLA representation. At that point, the clinic attendee is accepted for NLSLA representation and is considered a client of the program. Clearly, LSC has no issues with the characterization of the latter group of screened and accepted clients as PAI cases provided that the legal assistance supplied is provided by a private attorney. It is the former group of unscreened (or not fully screened) clinic attendees who are not considered clients of the program that cannot be counted towards the program's PAI requirement. In order to count clinic activities towards PAI requirements, programs must screen applicants for eligibility, determine they are eligible, and consider them clients of the program. *See* OLA External Opinion #EX-2008-1001. NLSLA may continue to engage in its self-help clinic activities but may not include them to satisfy its PAI requirement unless such conditions are met.

[22] *See* OLA External Opinion #EX-2008-1001 p. 2.

While LSC agrees that the emphasis on eligible clients in 45 CFR Part 1614 may lead to an unintended consequence of creating a situation where private attorneys have to comply with more onerous client screening requirements than staff attorneys, LSC policy must coincide with its regulatory authority. As such, NLSLA is directed to cease counting such activities towards its PAI allocation for FY 2009 and all future PAI allocations.

In its comments to the DR, NLSLA also indicated that due to the time it would take to respond to concerns regarding PAI-allocated funds related to several taskforces because the relevant costs do not appear critical in determining the program's compliance with its 2008 PAI cost allocation, the program has voluntarily deleted the above-referenced costs without conceding that they were inappropriate. NLSLA provided a copy of its Draft Revised Calculations as an exhibit to its comments to the DR.

9. Provide a written communication to all staff regarding the restriction regarding requests for attorneys' fees in NLSLA pleadings, including form pleadings, prior to submitting its comments to the Draft Report. Any communication to staff pursuant to this corrective action should be attached as an exhibit to NLSLA's comments to the Draft Report. In addition, the program must include a discussion of 45 CFR Part 1642 as a part of its standard new case handler training.

In its comments to the DR, the program stated that a memorandum regarding the restriction on request for attorneys' fees in NLSLA pleadings, including form pleadings, was provided to all staff on September 14, 2009. The memorandum was attached as an exhibit to the program's comments to the DR. In addition, it was noted that all new case handlers will be provided with training on 45 CFR Part 1642 as part of their staff orientation.

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December 3, 2009

Kamala Srinivasagam
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Dear Kammie:

This will follow up our recent telephone conversation about the status of the final report from Legal Services Corporation's (LSC) May 2009 Compliance Monitoring Visit of Neighborhood Legal Services of Los Angeles County (NLS-LA). I apologize for the delay in getting this to you; currently we are enmeshed in preparing our 2010 budget for consideration by our Board next week.

There are two items that we hope can still be addressed:

1. **Private Attorney Hours Devoted to PAI Cases**

The draft report expresses concern about the appropriateness of NLS-LA's treatment of two substantial Section 8 housing cases, ***Ennis and Lewis.*** Both cases were co-counseled with a private firm that had agreed to handle the cases pro bono. Working on significant litigation with a private firm is a long-time component of the NLS-LA's Private Attorney Involvement (PAI) work.

NLS-LA considered ***Ennis and Lewis*** PAI cases and counted as PAI costs the time NLS-LA lawyers worked on the cases. The Office of Compliance Enforcement (OCE) acknowledged that the cases were properly considered PAI matters, but questioned whether it was appropriate to count all the NLS-LA staff time devoted to the cases as PAI expenditures. OCE implied that they thought the private attorney time in the cases was minimal and that there was, or should be, a rule requiring a specific amount of private attorney time be devoted to a case before it counts for PAI purposes.

NLS-LA responded by noting that LSC regulations and policies do not require a particular level of private attorney involvement for a co-counseled case to be counted as a PAI case. In any event, NLS-LA noted that the cases in question actually involved huge commitments of time by private attorneys. They were not, as LSC's comments suggested, cases where private attorneys were only nominally involved.

We understand that LSC now agrees with us that there is no LSC rule or policy requiring some particular level of private attorney involvement in a case before it is considered a

PAI case. And, that the final report will reflect that and will no longer ask NLS-LA to provide that information in its pending PAI co-counseled cases.

We appreciate LSC's revised position. In our recent conversation, it also became clear to us that the comments in OCE's original draft report were based on erroneous information generated from a monitoring visit interview. So, we want to clear up the record on this item. Apparently, an LSC Team member, after noting the large amount of staff time devoted to ***Ennis and Lewis,*** asked about the amount of private attorney time billed to those cases and was told there is none - meaning there was none noted in the file, not that private attorneys had done no work on the cases.

In fact, that was an accurate statement by NLS-LA staff. It has not been our policy to track the amount of private attorney time within the PAI case files. Up until now, private attorney time has only been compiled in conjunction with the program's annual financial audit where the pro bono hours are used to calculate the amount of donated services during the year. In conjunction with the NLS-LA's most recent financial audit, Hadsell, Keeney, Richardson & Stormer, the private lawyers who co-counseled the ***Ennis and Lewis*** cases reported that they billed 899.20 hours of time to the cases in 2008 alone. An astounding number –clearly demonstrating that these cases are exemplary PAI cases and that there was no reason for the draft report to ever raise any concerns about these cases.

Nevertheless, in reviewing our PAI policies and discussing them with LSC, we have thought more about the general value of our attorneys regularly tracking private attorney time on PAI cases. Thus, NLS-LA has prospectively changed its standard PAI agreement with private attorneys to require them to regularly disclose their time billed on the cases as information to NLS-LA. In the future obtaining this information will be a standard practice at NLS-LA.

2. **NLS-LA Workers Rights Clinics Are a PAI Activity**

OCE concluded that the time NLS-LA spends operating its Workers Rights Clinics can not be considered an appropriate PAI expense for purposes of meeting the programs obligation to spend the equivalent of 12.5% of its LSC grant on PAI activities. Citing LSC's Office of Legal Affairs (OLA) opinion in EX-2008-1001, which stemmed from an Ohio inquiry, OCE concluded that NLS-LA's staff time devoted to the Worker's Rights clinics can not be considered a PAI activity, because there is no individual review of LSC eligibility.

In our initial response to the Draft Report, NLS-LA challenged this ruling on legal and policy grounds maintaining that the OLA's opinion about the Ohio program's practices was not applicable to NLS-LA and that it was based on an inaccurate interpretation of the LSC statute. We understand that OCE disagrees with our legal arguments and continues to assert that OLA's conclusion in response to the Ohio programs inquiry are applicable to NLS-LA and that OCE continues to maintain that no NLS-LA Workers Rights Clinic staff time can be considered in our PAI 12.5% calculations.

In reviewing this issue again after our most recent telephone conversation, which to date has focused on the propriety in general of applying the OLA opinion to NLS-LA's Clinics,

has glossed over a key factual question: Whether NLS-LA's Workers Rights Clinics do include the individual LSC eligibility review ?

As best we can understand, the Ohio clinic reviewed in the OLA opinion, which was administrated and operated by social services and religious organizations, indicates that no individual LSC eligibility review occurred. Clients were apparently connected to private pro bono lawyers without the benefit of any LSC eligibility screening. Our clinics operate quite differently.

NLS-LA Workers' Rights Clinics, modeled in part from our highly successfully Self-Help Centers, involves a two-step intake process that includes an LSC eligibility screening. Under the NLS-LA model: (1) clients are initially helped by on a self-help basis that ensures all clients attending the clinics quickly receive some help – no one walks away empty-handed; (2) we are able to serve relatively high numbers of clients effectively and efficiently with smaller number of NLS-LA staff along with a team of lawyer and non-lawyer volunteers; and (3) to the extent the clients must take some immediate action to protect their rights – they are able to do so effectively themselves.

The self-help clinic also provides us the information necessary to evaluate whether any cases may be appropriate for representation by NLS-LA itself or through pro bono volunteer lawyers. (In our self-help centers we call this a "Secondary Triage" – the first triage being sorting out what type of self-help assistance is appropriate for a litigant.). Individuals with cases that may be appropriate for representation are all screened for LSC eligibility **before** there is an agreement for representation by NLS-LA or referred to a pro bono attorney for representation.

We believe NLS-LA's unique two-step process is far different from the Ohio model reviewed by OLA and is facially consistent with the conclusions reached by OLA in its opinion in EX-2008-1001 opinion. In light of these facts, we suggest that it is inappropriate for OCE's final report to conclude that the NLS-LA Workers Rights Clinics by definition are not PAI activities.

Rather, we suggest that the report simply address the applicability of the OLA opinion to the NLS-LA Workers Rights Clinics and then ask us to re-evaluate our consideration of Workers Rights Clinic staff time when we conduct our review our 2008 PAI 12.5% calculations as the OCE report otherwise requires. That will provide OCE sufficient opportunity to further consider some of the underlying factual questions, without further delaying the release of the final report. At the same time, it will allow NLS-LA to preserve its view that the Clinics process meets LSC PAI requirements. And, it provides a specific process and mechanism for continuing discussion of the issues and timely resolving them.

Kammie, thank you again for your patience and support during this process. We hope OCE will look carefully at these final comments. Once again, I want to personally thank you, Danilo and the rest of the OCE team for your courtesy, professionalism, and most importantly, your help and advice during this OCE review.

Everyone here at NLS-LA sends you all our best wishes for the holidays and a Happy New Year!

Best regards,

Neal Dudovitz
Executive Director