



May 1, 2009

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**Re: Follow-Up to CSR/CMS Visit, Recipient No. 233070**

Dear Mr. Seigel:

I would first like to thank you and the Nassau/Suffolk Law Services Committee (“NSLS”) staff for the courtesy and cooperation extended to the Legal Services Corporation’s (“LSC”) Office of Compliance and Enforcement (“OCE”) Follow-up team of February 2-6, 2009.

Second, I write to inform you that NSLS made substantial progress in resolving the issues outlined in the corrective action section of the Final Report issued on January 19, 2006. However, as described below, OCE is making further recommendations and corrective actions to improve NSLS’ already superior operations.

***Background of Review***

NSLS is a two-county LSC recipient with three field offices throughout Long Island, NY. The administrative office is headquartered in Hempstead, NY and field offices are located in Islandia and Riverhead, NY. In October 2004, OCE and the Office of Program Performance (“OPP”) visited NSLS in a Joint Visit. A Final Report for that visit was issued in January 2006. The Final Report included 25 OCE corrective actions that the program was required to implement.<sup>1</sup>

On February 2-6, 2009, OCE conducted a Follow-Up Review (“FUR”) to NSLS to determine the status of 24 of the 25 corrective actions from the report issued on January 19, 2006. In addition, pursuant to expanded fiscal review guidelines implemented by OCE, several tests of internal controls and financial accountability were conducted.

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<sup>1</sup> One of these was rendered moot with LSC’s adoption of the Revised 2008 CSR Handbook.

In accordance with the approved work plan, the team interviewed a majority of program management, including the PAI Coordinator, Managing Attorneys, and administrative oversight staff. Staff intermediaries were used for case review and these persons were also engaged in discussions regarding the changes made to intake and case management since the prior review. All requested information was provided in a timely manner and the case review was effectively conducted with the assistance of the program intermediaries.<sup>2</sup>

The case sample included several groups of targeted cases that would help determine the effectiveness of program actions in specific areas, including: potentially dormant cases, PAI cases, and potential duplication. A majority of the overall cases were randomly selected cases. Cases were reviewed from each of the following groups: 2007 Closed, 2008 Closed, 2009 Closed, Staff Open Cases, and PAI Open Cases. Cases were sampled from all three offices and from all program units. In addition, a sample of non-LSC designated cases were tested to determine whether such cases otherwise violated any LSC program prohibitions, and whether such cases were correctly not reported in the CSR.

NSLS has arranged its intake system with the overriding value that all cases should first be screened under LSC guidelines, with the instruction that all cases that qualify under LSC rules should be reported in the CSR. NSLS will then deselect and those cases that do not fit LSC income or asset guidelines which fit under another funding source. NSLS has several non-LSC funding sources that allow for different standards from LSC, although many of the cases under those grants will also be LSC-eligible. With this overriding program instruction to staff, the February 2009 review tested both LSC and non-LSC cases for proper inclusion in the CSR.

In the February 2009 FUR, LSC noted substantial evidence that the program actively engaged corrective action in all 24 of the corrective action items from the January 19, 2006 Final Report. Overall, it is clear that NSLS seriously planned and implemented actions, and dedicated extensive time and resources to the various corrective action issues. As a part of this, NSLS management accepted an offer by LSC to receive a joint (OCE/OPP) training and technical assistance visit regarding intake prior to the Final Report being issued. This training and technical assistance was provided for two days in April 2005, and was focused upon assisting NSLS understand options and requirements regarding intake and its related compliance.

For a majority of the corrective actions, the program's actions have fully or substantially satisfied the underlying LSC requirement. Actions taken by NSLS on various corrective action items include all of the following: assessment and implementation of new program policy and procedures, new staff assignments, addition of dedicated staff, staff working groups, staff training, management training, office memoranda, email communications, management oversight, management follow-up, establishment of goals and deadlines for completion of

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<sup>2</sup> As was done in the prior visit, LSC again adopted a specialized case review system for HIV-related cases so as to ensure that NSLS was compliant with state disclosure laws regarding such clients. Separate case lists without client names were accepted and case review was conducted without disclosing the client's identity. LSC was able to effectively sample these cases with these special procedures.

corrective tasks, and other various activities. LSC finds the level of activities taken by NSLS to clearly evidence the serious commitment made towards correcting the outstanding issues.

In all areas there was improvement noted. However, there are a number of areas that will require continued or new efforts. For those issues that are not yet fully addressed, the remaining non-compliance may be limited to one form only, one office, a few individuals, or one unit. In these instances, more limited, targeted action by NSLS should be effective in remedying the issue(s). However, in one area -- dormancy and timely case closing -- the need for change may be more expansive, and NSLS needs to take new and more effective steps to finally resolve these longstanding issues, as discussed herein.<sup>3</sup>

This letter has arranged the prior corrective actions into related regulatory and functional groups, with the effect that the corrective action items are not discussed in prior numeric order. However reference to the prior corrective action numbers used in the Final Report issued in 2006 is maintained for sake of reference.

### **Prior Corrective Action Issues**

#### ***Board Governance***

##### ***Bylaws Regarding Appointment of Members (CA-1)***

NSLS was required to amend its bylaws to correctly reflect LSC statutory and regulatory requirements regarding board-appointing authority. (CA-1) This item involved removal of some bylaw language that allowed the NSLS board to directly appoint a member by a majority vote. The NSLS bylaws needed revision to state the board appointment limitations of 45 CFR Part 1607 and the McCollum amendment, which direct that attorneys and client members must be appointed by bar associations and other entities external to the program.

Documentation provided by NSLS, including revised bylaws and supporting board minutes, conclusively evidenced that all necessary changes were fully adopted. Thus, CA-1 is fully completed.

#### ***Intake Screening***

Related to client intake, the prior Final Report required corrective action to:

- Ensure, that all staff members who currently are allowed to handle intake are utilizing all necessary compliance standards and data entry protocols (CA-2);

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<sup>3</sup> As discussed *infra*, the program did establish standards and requested staff to conduct their own review and proper closing of cases, and asked that Managing Attorneys also ensure these activities. However, the review of sample cases indicated that some staff did not follow the instructions given. As explained later in this letter, NSLS will need to adopt a new more centralized, effective and conclusive oversight system regarding dormancy and timely case closing.

- Cease considering food stamps as income for LSC income eligibility (CA-5);
- Adopt changes to program forms to ensure that its forms support full compliance in eligibility screening under Parts 1611 and 1626, as described in the prior report (CA-6);
- Ensure that applicant intake forms have appropriate marks indicating that all necessary questions regarding income and assets have either been answered or indicated clearly that there is no such income or assets (CA-7);
- Cease its practice of deducting miscellaneous amounts of assumed income for applicants over the gross income level (CA-8);
- Implement a uniform approach for screening assets to be used by all staff who perform intake or who review completed intake forms from applicants (CA-9);
- Remove defaults to zero for income and assets data in the case management system to fully comply with CSR instructions (CA-20); and
- Review its methods of checking for potential conflicts of interest and ensure that this checking is done before any confidential information is obtained from the applicant (CA-21).

Through form revision, changes to the Automated Case Management System (“ACMS”), and other actions, NSLS has fundamentally remedied the following intake related corrective actions from the prior report: CA-5 (food stamps); CA-7 (form notations); CA-8 (assumed income), CA-9 (uniform assets standards); CA-20 (zero defaults); and CA-21 (conflicts timing) as discussed below. Three other corrective actions relating to intake screening (CA-2, CA-6 and CA-9) require some additional attention and actions, as discussed below.

#### *NSLS Enforcement of Standards (CA-2)*

CA-2 required that all staff handling intake utilize all compliance standards and data entry protocols with the goal to ensure the proper use of all necessary compliance standards and data entry protocols by every such staff member. Overall, NSLS gave this item significant attention, and improvements were noted during the February 2009 FUR. However, as discussed below, some additional attention to this area is warranted, and will be necessary as part of the program’s ongoing oversight of case management.

To address the intake-related corrective action, NSLS created a staff working group to study and improve intake. This group created a new standard “core” intake form for use by all units (with some further adaptations allowed by units that do not affect the “core” elements). Thereafter, NSLS worked to bring the paper intake forms into harmony with the ACMS intake and eligibility processes. In addition, front desk manuals and referrals sources were created and were located at the front desk of each office.

After studying other intake methods, NSLS, through its intake working group, affirmed its decentralized intake screening method. Due to this choice, the necessary actions to ensure compliance with CA-2 increased significantly as there is a large group of staff involved in intake

who need training, and whose intake (and case closing) work must be checked. A significant majority of program staff are directly involved in intake.<sup>4</sup> NSLS did take clear, substantial, and well documented actions to educate staff on proper intake – including necessary training, updating intake forms and processes, incorporating 2008 CSR Handbook revisions, increased communication systems with staff, as well as the creation and staffing of new positions dedicated to intake. Significant memoranda and training materials provided by NSLS indicate training efforts in January 2009, December 2008, December 2007, August 2007 and January 2007. These efforts had the overall positive result of a high level of intake-related compliance, as observed during the February 2009 FUR. However, due to the number of staff involved, some exceptions were noted, and continued ongoing efforts under CA-2 are necessary.

Interviews with staff of different offices and units during the February 2009 review indicated allowable and varying methods of data collection and recordation for different units. While a majority of these methods would result in screening and data recordation that meets LSC requirements, in other instances it may not, or did not. For example, while it is NSLS policy that staff members check the intake information provided by the client, through review and discussion of the data with the client, in some instances it was noted that staff might not check the data as required. In any case in which the data is not checked with the client, the entire intake would be inappropriately subject to whatever level of understanding and disclosure (or not), provided by the applicant/client. This is too vague a standard. Also, there was one seriously insufficient form discovered in use in one unit in the Hempstead office -- the form neither required sufficient questioning of applicants under LSC requirements, nor would it allow for sufficient recordation of an adequate amount of intake data (discussed further, *infra*). Finally, and of significant concern, a majority of the sample intake packets provided to the team during the review contained case closing information that listed the prior CSR Handbook closing categories and not the revised ones.

Such variations demonstrate that NSLS will need to be continuously vigilant. Further, based on the above, CA-2 cannot be considered to have been fully completed. NSLS will need to continue targeted actions to ensure the goals of CA-2. Additional periodic oversight methodologies and ongoing attention by NSLS is necessary. This effort should focus on additional periodic and targeted oversight methodologies.<sup>5</sup> This ongoing formal monitoring process should be designed to identify persons who need additional training and all staff and units who fail in any significant way to follow the proper intake protocols. At a minimum, NSLS management or senior administrative staff should conduct periodic reviews of sample intakes for every staff member involved with intake. These reviews should be conducted at least every six months, if not more

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<sup>4</sup> At present, a majority of NSLS staff, including many managers, all casehandlers (attorneys and paralegals), support staff and others must know how to properly conduct an intake that will meet all core elements of the LSC regulations, as well as comply with program protocols and policies, and data recordation requirements.

<sup>5</sup> While training of staff is critical, especially when changes and updates occur, what is likely to be most effective at this time is for NSLS efforts to be focused in the adoption of oversight systems whereby staff efforts are checked, and then targeted training or specialized assistance for identified staff needing improvement can be provided.

frequently, and should be designed to identify any issues that need to be corrected at the individual staff, unit or office level.<sup>6</sup>

*Treatment of Food Stamps (CA-5)*

Interview of NSLS staff, review of related program documentation including intake protocols and staff training, assessment of the current intake system, and review of sampled cases all evidenced that the program ceased recording or including food stamps as income for LSC eligibility. It is noted that NSLS staff may still obtain food stamp receipt information, but that it is properly recorded in a manner that does not automatically calculate it as income. The program's actions have fully addressed prior CA-5.

*Intake Form Revision (CA-6)*

CA-6 required that NSLS adopt changes to program forms to ensure that its forms support full compliance in eligibility screening under Parts 1611 and 1626. After the prior review, NSLS devoted substantial and appropriate attention to update its forms as required. Immediately following the prior review, NSLS recognized the need for enhanced standardization of the intake process, and its surrounding forms. Significant work was conducted to update a "core" intake form that would form the central basis for all intake forms used by NSLS. There are some intake variations by unit for issues that address a particular legal area and related screening.

PAI forms were also reviewed and updated. There are four types of PAI cases, civil, family law, bankruptcy, and landlord tenant. After the issuance of the 2006 Final Report, PAI intake forms were standardized regarding basic eligibility information.

Successful adherence to a core standardized process is particularly important in light of the NSLS decision to require its staff to initially screen all applicants for LSC eligibility, regardless of the source of funds used to serve the client. This allows the program to maximize the number of LSC-eligible cases correctly reported in the LSC CSR, as NSLS continues to use the LSC standards as a starting point for all intake screening. This is an acceptable and appropriate process. For those applicants who do not meet LSC's eligibility criteria, but do meet another funding source's requirements, NSLS will potentially serve such clients under those funding sources, and has directed that such cases be appropriately coded so as to exclude them from the LSC CSR.

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<sup>6</sup> Although the oversight process discussed in this section is focused mainly on the elements involved in conducting proper intake, in light of other discussions in this letter, these periodic reviews should also include closed cases to ensure certain program practices. In particular, an enhanced oversight and case sampling review process should be adopted that assesses closed cases to ensure that they have been properly coded for CSR inclusion or exclusion and that a proper CSR closing category has been selected as evidenced in the file and case notes. These case closing topics are discussed further, *infra*.

One unauthorized and outdated form was found in use during the February 2009 FUR. The one exception involved a screening form that had been provided to the (Spanish Language) Intake Paralegal from a specialty unit in the Hempstead office. This form appears to be an old, unit-specific form, and did not require the collection of adequate income, assets and other core data for LSC standards. When this form was shown to senior administrative staff, they stated that it would be completely removed from use in the unit and by the associated intake staff within 24 hours.

In light of the one outdated form found in use, NSLS needs to again take steps to ensure that all old forms are destroyed, and are otherwise unavailable for staff use. Further, ongoing review by NSLS management or their designees, of sample intakes as completed by all staff conducting intake, should ensure that only updated, proper forms are actually being used by staff.

#### *Evidence of Income and Assets Screening (CA-7)*

The January 2006 Final Report required that all applicant intake forms be fully completed. The key element here is that when applicants have no income or assets to consider that appropriate marks be made by staff to indicate that all necessary questions have been asked and answered.

Over 20 intake forms or packets of intake related forms were obtained during the review and assessed. All forms, with the exception of the one discussed above, had been standardized to reflect the core requirements of LSC income and assets screening. These intake forms allow for proper marking of intake questions and answers. Further, the ACMS has various built-in check systems to ensure that all required questions have an affirmatively entered answer.<sup>7</sup>

The review of sample cases evidenced that NSLS staff using the updated core intake form are more fully completing the necessary forms. Further, staff members are otherwise properly indicating in the ACMS those instances in which key questions have been asked and there is no affirmative information to record. The actions taken by NSLS under CA-7 are found to have addressed the core issue. However, ensuring ongoing adherence to the core form will require an ongoing commitment to oversight by NSLS due to the extensive number of people involved in intake. This was discussed with program management who acknowledged that ensuring proper intake practices, and form usage, will remain an area for ongoing oversight.

The one inadequate form found to be in use (discussed above in the discussion of CA-6), again raises compliance issues with CA-7. However, as this form was to be immediately withdrawn from use, this error should be resolved going forward.

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<sup>7</sup> This computer function was tested during the review with use of a fictitious case in which deliberate defects in information were entered and an NSLS staff member attempted to continue or close the case record. In several core areas, the computer would either remind the staff member of missing information or would not allow the record to be recorded as complete with the lacking or incorrect data.

*Use of Assumed Expenses (CA-8)*

Interview of NSLS staff, review of related program documentation, assessment of the ACMS, and review of sampled cases all evidenced that the program ceased its prior practice of deducting miscellaneous or assumed amounts of income for applicants over the standard gross income level. The program has adopted a more standard over-income eligibility process that does not rely on projected income for eligibility determinations. These actions fully addressed prior CA-8. However, some new changes to the current over-income approval and documentation practices are necessary, as discussed *infra*.

*Asset Screening Protocols (CA-9)*

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. Also, for each case reported to LSC, recipients must document the total value of assets pursuant to its Board-adopted asset eligibility policies. *See* CSR Handbook (2008 Ed.), § 5.4 and 45 CFR § 1611.3.

Interview of NSLS staff, review of related program documentation including intake protocols and staff training, assessment of the current intake system, and review of sampled cases all evidenced that the program has adopted a core assets screening process as required by prior CA-9. The program's actions have been sufficient for resolution of this prior corrective action. However, as discussed below, there are two areas for consideration by NSLS.

First, the review of sample cases evidenced that the recordation of *exempt* assets is done differently between units. While a majority of units do not record exempt assets, the PAI unit did routinely include this information. For example, in PAI cases, exempt cars or houses were often listed, and then ignored when calculating the non-exempt assets to consider. Neither of these options raise a compliance issue – however, NSLS may wish to consider whether either of these approaches has an increased advantage, and if so, whether to adopt one standard approach for all program intake. However, this is mentioned as a recommendation solely, and no action is required.

Second, the NSLS asset guidelines state that an independent determination of assets is not required if the applicant's income is derived solely from certain governmental programs for low income individuals as allowed by regulation. However, a review of case sample files revealed that NSLS intake staff members are not utilizing this government benefit exemption policy. There were several files reviewed in which the exception applied, but a full assets screening was conducted. Although this presents no compliance issue, it is recommended that NSLS take additional oversight and training measures to ensure that all staff involved in intake understand how to properly apply the government benefit exemption should they decided to rely upon this exception.



*Zero Defaults in the ACMS (CA-20)*

The January 2006 Final Report required NSLS to remove defaults to zero for key income and assets data as required by LSC policy. Review of the case management system during the February 2009 FUR evidenced that NSLS has taken full corrective action as required. As a result, NSLS has fully complied with CA-20.

*Conflicts Checking (CA-21)*

In the January 2006 Final Report, LSC requested that NSLS review its manner of checking for conflicts as it relates to the collection of data from applicants. Review of the case management system during the February 2009 FUR indicated that NSLS has considered the elements of CA-21, and this item is considered closed.

*New Staff Positions (CA-2, CA-7, and CA-21)*

NSLS created and staffed additional intake-related positions to specifically address some identified areas needing improvement. While these positions help with many of the intake-related corrective action items, they help address CA-2, CA-7 and CA-21, in particular. NSLS should be strongly commended for the addition of targeted staff to enhance intake. These staff additions were designed by NSLS to address both issues of client accessibility and critical issues of proper compliance.<sup>8</sup>

One position was added in the Hempstead office for the main purpose of assisting with Spanish-speaking client accessibility. A position was created and filled in Hempstead for a Spanish-speaking intake worker who is responsible to assist any unit or individual in the Hempstead office with intakes in Spanish. NSLS management stated that a similar position was determined to not be necessary in the other two offices, as those offices have sufficient bilingual staff that can handle Spanish intake.

From a compliance standpoint, the new staff position in the Islandia office is significant. NSLS, through its intake working group, formulated a new staff position, Intake Coordinator, to be housed in the Islandia office. Review of this new position, including interview of the person hired, and review of related intake changes in Islandia evidenced that this position has effected positive changes as of the February 2009 FUR.<sup>9</sup> Further, as this position is new and considered

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<sup>8</sup> One position was added in the Hempstead office for the main purpose of assisting with Spanish-speaking client accessibility. A position was created and filled in Hempstead for a Spanish-speaking intake worker who is responsible to assist any unit or individual in the Hempstead office with intakes in Spanish. NSLS management stated that a similar position was determined to not be necessary in the other two offices, as those offices have sufficient bilingual staff that can handle Spanish intake.

<sup>9</sup> For example, the Intake Coordinator position now allows Islandia in-person applicants to complete an intake at the time they physically show at that office. The prior visit LSC had noted a weakness in this office in that persons who came to the Islandia office were typically not allowed to complete an application at that time but were requested to use the program's regularly scheduled intake processes and sent away to apply another time. The Islandia Intake

by NSLS to be evolving, the ability of NSLS to expand this position to include additional intake and case documentation oversight is significant.<sup>10</sup> NSLS is strongly commended for the adoption of this new position and is encouraged to continue the position's growth to match the original job description breadth conceived by the program.

The job description (job announcement) for the Intake Coordinator position indicates an expansive and appropriate vision for enhancement of intake and its surrounding compliance requirements. NSLS management stated that the position is still in the development and testing phase and that all duties listed in the job announcement have yet to be assigned. From a compliance perspective, those aspects of the job description that focus upon "ensuring" the accuracy of intake and involve oversight of intake will be advantageous for NSLS to fully implement. NSLS management indicated that it is open to increasing the duties of the position and may consider whether such a position should be permanently assigned to each office. Allowing an Intake Coordinator position to expand into office-wide checking of intake would assist management in identifying those units or staff who require additional training or oversight to ensure proper practices. Having a permanent position assigned to such oversight duties is particularly useful to NSLS due to the number of persons who are allowed to conduct client screening.

NSLS also has increased the duties of other management or administrative staff regarding oversight of intake. Interviews of staff and cases sampled during the February 2009 FUR evidenced that the additional oversight activities have assisted overall in improving the intake practices of staff.

### ***Case Closing Practices and CSR Handbook Application***

Several corrective action items of the January 2006 Final Report related to case closing practices and the proper application of the LSC CSR Handbook. The January 2006 Final Report required NSLS to take corrective action to:

- Adopt formal procedures regarding case closure to ensure that cases are closed when completed and that untimely closures do not occur. These procedures were required to also address proper CSR Handbook closing guidelines (CA-3);
- Ensure, through ongoing training and appropriate supervision, that all staff who are allowed to close cases for inclusion in the LSC CSR are doing so properly, and using proper CSR Handbook application (CA-4);
- Ensure that the few files in which proper documentation under Part 1626 is not present in the file are not reported in the CSR (CA-12);

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Coordinator now ensures that applicants who show in person are allowed to make an application at that time and also sign key compliance documentation, such as the citizenship attestation.

<sup>10</sup> NSLS may wish to first expand the duties of the current Intake Coordinator position to include some oversight and testing of intakes conducted in all three program offices. This would allow NSLS to have more evidence as to the extent of such oversight work that could be accomplished by the current position before expanding the number of such positions.

- Ensure that all files identified for CSR reporting have clear evidence of legal advice or services to support the closing code level designated (CA-13);
- Ensure that staff members understand that only cases documented as LSC-eligible (regardless of funding source) can be reported in the CSR (CA-17);
- Review older open potentially dormant cases to check for dormancy, duplication, or input errors (CA-18); and
- Adopt systems to require all staff to close cases in a timelier manner (CA-19).

*Part 1626 Compliance and CSR Reporting (CA-12)*

The January 2006 Final Report required that NSLS take steps to exclude cases from the LSC CSR when the files lacked adequate or proper documentation under 45 CFR Part 1626, regarding US citizenship or eligible alien status. NSLS addressed this requirement in training provided to staff and it was also part of the program's review process for closed cases. Staff members interviewed during the February 2009 FUR evidenced clarity that cases lacking proper documentation under Part 1626 are not to be included in the LSC CSR. Finally, review of sampled cases evidenced a high level of compliance with the documentation requirements of this regulation. NSLS has achieved a high level of compliance with CA-12. NLS has taken sufficient and effective attention to correcting this issue.<sup>11</sup>

*Untimely Case Closure and Dormancy (CA-3, CA-18, and CA-19)*

To the extent practicable, programs should report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited services should generally be reported as having been closed in the year in the grant year in which the case was opened with limited exceptions. See CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L) 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 (2008 Ed.), § 3.3(b).

Sample case review evidenced that NSLS continues to have issues with dormant cases and timely case closure. LSC notes that NSLS did take steps to attempt to address the corrective action items noted by CA-3, CA-18, and CA-19. However, documents provided during the February 2009 FUR indicated that, in many instances, individual staff or units were relied upon to resolve any dormancy or timeliness issues of that individual or group. NSLS did provide training and follow-up through ongoing reminder notices. However, it appears that the net result of the process used did not ultimately correct the issues of dormancy and timely case closing.

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<sup>11</sup> Again, however, as many staff members close their own cases, NSLS will need to provide ongoing oversight of closed cases to ensure that cases continue to be properly designated for CSR inclusion based on 45 CFR Part 1626 documentation.

A significant number of cases sampled were either untimely closed or dormant and this included cases from all three program offices.<sup>12</sup> There were several closed 2008 cases that were untimely closed (and incorrectly not deselected from CSR reporting) and there were several open cases whose files indicated dormancy, sometimes for several years. For example Case No. 04-02-13000213, closed in 2008, appears to have been fully handled in court in 2004 with no work documented after 2004. Another example was Case No. 01-02-16002656, an open case in which the last time entry was January 2, 2003. Another case, Hempstead Case No. 04-01-02003443, opened in November 2004, had a last activity (per the file and time records) conducted in January 2005, and had no documentation or evidence as to why it should be currently open. This file appears to have been missed by any NSLS case review method(s) for four years.<sup>13</sup> This and other cases reviewed indicates that the NSLS efforts in this area did not capture all dormant open cases, and that current case review practices do not ensure timely case closing.

In consideration of the above, NSLS is again required to take additional and different actions to ensure compliance with CA-3, CA-18, and CA-19. NSLS is reminded that untimely case closure as well as dormant cases on the open case lists can distort the annual CSR report, and provide inaccurate information regarding truly open and active cases.

A conclusive and effective review for dormant cases can be most simply accomplished by running lists of cases open for the longest periods and in which no time charges have been made for a six-month period. This type of list should identify those files that are no longer active and should be closed. This review can also be effectively used as part of the general quality case oversight. A six-month list of all cases with no time charges can also indicate to management those cases that need continued work and should be active, and that therefore require follow-up with assigned staff.

#### *Closing Code Usage (CA-13)*

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

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<sup>12</sup> Examples include: Case Nos. 01-02-13006110 (untimely closed 2008 case in which the last work occurred in 2003); a case opened in 1997 (old case number identification of 962-003953) which was inadvertently re-opened and then closed again in 2008; 01-02-16000989 (a dormant open case in which the last time entry was 6/1/07), 03-04-18000752 (a dormant open case in which the last time entry was 3/25/07), 05-01-01001551, (an untimely closed 2008 case in which the last time entry was 6/19/07), 04-01-05000201 (an untimely closed 2008 case in which the last time entry was 8/1/05), 04-01-05002855 (an untimely closed 2008 case in which the last time entry was 3/14/05), 05-01-05001316 (an untimely closed 2008 case in which the last time entry was 9/23/05), 05-01-05000778 (an untimely closed 2008 case in which the last time entry was 3/29/05), 04-01-03002235 (an untimely closed 2008 case in which the last time entry was 3/8/06), and 05-01-05001226 (an untimely closed 2008 case in which the last time entry was 5/12/05). It was also observed that several untimely cases in the Hempstead office were assigned to the same advocate.

<sup>13</sup> When such dormant cases are ultimately closed, absent recent legal activity on the case, the case must be deselected from reporting in the current year CSR.

according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed.), § 6.1.

The FUR review evidenced that NSLS made significant efforts to improve the program's closing code usage, through training, policy communication, and management involvement. Further, sample cases reviewed indicated that NSLS has made improvement in the use of CSR Handbook closing codes and has mostly transitioned successfully to the revised CSR Handbook codes. However, some items for improvement were noted, as discussed below. There were several instances of case closing code errors, with several of these involving apparent transitional issues in understanding new closing codes and new definitions of the revised Handbook in 2008.<sup>14</sup> Also, there were some error patterns identified.

First, it appears that the PAI effort at some point either misunderstood or ceased using category "B" with the incorrect result that several cases closed as "A" should actually be closed as a "B". *See, e.g.* Case Nos. 07-01-11003909, 07-01-11001138, 07-01-11003595, 08-01-1100520, and 08-01-11001488 all of which had an "A" closure, but are actually a "B" closure. Second, all cases tested that used closing code "K" in 2008 were in error. *See* Case Nos. 07-02-02001672 (closed as K but should be I), 08-01-01000809 (closed as K but should be A), 08-01-01002023 (closed as K but should be A), and 08-01-16000666 (closed as K but should be L). NSLS should question its use of the closing category "K", understanding that LSC did not anticipate that this closing category would be used frequently, as most common services provided to clients should fit more accurately within another closing code.

As a result of the items discussed above, CA-13 cannot be considered fully resolved at this time. Further actions by NSLS to address these targeted issues is necessary. Additional targeted training for staff may be necessary. However, as discussed elsewhere in this letter, effective and comprehensive management oversight review of cases at the time of case closing may be all that is necessary to identify patterns to be corrected or persons who need targeted assistance.

#### *Proper Inclusion and Exclusion from LSC CSR (CA-4 and CA-17)*

The prior report required NSLS to ensure that staff members understand, through ongoing training and appropriate supervision, how to properly close cases for inclusion in the LSC CSR (CA-4). Related to this, the prior report required that NSLS ensure that only cases documented as LSC-eligible (regardless of funding source) are reported in the CSR (CA-17).<sup>15</sup> A key part

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<sup>14</sup> *See e.g.*, Case Nos. 01-02-13002414 (closed as F but should be I as the divorce decree was granted); 08-02-01002905 (closed as H but there was no agency decision to support that closing code), 04-02-1300600 (closed as I(2) but evidence of legal assistance supported L), 08-02-040001455 (evidence of legal assistance supported L not B), 08-01-06002893 (evidence of legal assistance supported B not L), 04-02-13001626 and 07-02-13000402 (closed as F but evidenced of legal advice indicated G), 08-01-03001866 (closed as B but should be A), 07-01-01003894 (closed as L but should be H), 08-01-02006822 (closed as A but should be B), and 08-01-06003932 (closed as L but should be G).

<sup>15</sup> Standardized use of the ACMS is a particular challenge for NSLS due to the high number of staff involved in intake, client screening, data entry, and case closing.

of the final determination of whether to include a case for LSC CSR reporting is whether it contains appropriately evidenced legal advice.

The February 2009 FUR evidenced that NSLS has communicated proper instructions to staff to address CA-4 and CA-17, and the review noted several improvements in related program practices. However, there were some errors regarding the final coding decisions recorded by staff as to whether a case should be included or excluded from the LSC CSR.

A majority of LSC-funded cases tested contained clear evidence of legal advice to support the case being reported. However, the test of sample cases from the non-LSC case list found several cases that did qualify for LSC reporting but that had been coded for exclusion (or already had been excluded in a prior year).

Interviews indicated that the case closing oversight system is decentralized. Each unit's supervisor is to review cases at time of closure. This management review is to include checking for complete intake information and other compliance documents and data. However, it appears that the actual practice of reviewing all cases may not be done. The emphasis appears to be on reviewing cases that receive higher levels of service. Some managers stated that cases at the "A" and "B" closing levels may only be sampled or "spot-checked", and thus only a sub-set of such limited service level cases will actually be checked by management at case closing.

In light of the ongoing need for enhanced standardization of case closing practices, and to avoid coding mistakes, NSLS should determine how best to conduct additional and/or more targeted testing of closed cases so as to ensure proper practices by all individuals and units.

#### *Unavailable Case Files*

There was a significant pattern identified in various case lists reviewed – previously closed cases were found on open case lists and these cases were incorrectly indicated as "active" files or cases. A second related issue to this pattern was noted – there were several cases identified by LSC for testing that were unable to be located by NSLS. In some instances, NSLS staff were certain that these "unable to locate" files had been closed in a prior year (sometimes many years ago) and in some instances staff were certain that the file had already been destroyed (correctly) under the program's retention policy.<sup>16</sup>

However, the above brings into question the reliability of the current "open case list", both staff and PAI, and indicates the need for additional targeted and effective corrective action by NSLS to clean the open case list of all dormant, previously closed, or error cases. Also, NSLS should

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<sup>16</sup> Typically, files relevant to this discussion were opened years ago. See Case Nos. 01-01-13001392, 00-01-12001151, 01-01-02000131, 01-01-02000812, 01-01-02001635, 01-01-12001251, 02-02-1-05001315, and 00-01-05002626. In some instances, intermediaries stated that the file indicated that it was closed in a previous year, *see, e.g.*, open Case No. 01-02-02004254

determine the cause(s) behind closed cases reappearing as open in the computer and take steps to ensure that the problem will not continue.<sup>17</sup>

A component of CA-18 from the January 2006 Final Report requested NSLS to review cases as to check for, and avoid, potential duplication. The review of sample cases evidenced that overall NSLS has clear standards that staff are following in practice, and thus is avoiding the reporting of duplicate cases.<sup>18</sup> However, the problematic cases discussed above, those that appear to get reopened and closed a second time in a subsequent year, must be uniformly deselected from any current CSR report. Otherwise, NSLS would be reporting duplicate cases over several year periods.<sup>19</sup> Due to the existence of mistakenly open cases, NSLS must continue to give special attention to how potentially dormant or defective cases are closed to ensure that they are not included in any current year CSR.

### *Underreporting*

Review of the non-LSC designated case list provided in advance of the February 2009 FUR evidenced that there are additional cases that could be reported to LSC. The review of a sample of 2008 closed cases (designated as non-LSC reportable) indicated that most of the files sampled from these lists were indeed non-LSC funded and non-LSC reportable. However, in the relatively small sample reviewed, there were six cases that did meet all LSC documentary and eligibility guidelines and could have been reported.<sup>20</sup> The exclusion of these cases appears to have been caused by staff coding errors and/or continued misunderstanding at a individual staff or unit level of what should be CSR reportable.

The above indicates that NSLS should adopt an additional, year-end review of non-LSC funded, non-LSC reportable closed cases and switch coding on those that could be reported. As with

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<sup>17</sup> This type of occurrence, in which a previously closed file subsequently reappears on a current open case list, has been noted in other programs and is most often caused during a conversion from one ACMS to another, a computer upgrade, or by some other computer error. In other instances it can be human error in which a staff member when using or referring to a previously closed case changes it from closed to open. In any case, such cases should be relatively easy to identify when checking periodically for dormant cases through examination of all cases identified by the computer as open.

<sup>18</sup> A high level of compliance with the duplicate reporting requirements was noted in the February 2009 review. Only two duplicate sets of cases were identified in the file sampling conducted in February 2009. First, Case No. 08-01-02000624 involved a landlord-tenant issue in which the program negotiated a settlement on behalf of the client and closed the case in February 2008. In April 2008, the client returned on an order to show cause arising from the negotiated settlement and NSLS opened Case No. 08-01-02001289 which was then closed as a court decision. As both files involved different levels of legal assistance provided to the same client during the same calendar year with essentially the same legal problem, only one case should be closed at the highest level of assistance provided. Similarly, Case No. 08-02-02002180, a closed 2008 case, duplicated another closed 2008 case.

<sup>19</sup> For example, *see* Case No. 07-01-11001832, a PAI case that was closed and reported in the CSR in 2007 and then again closed, and marked for reporting, in 2008. Significantly, this file was closed in both years with the exact same case number.

<sup>20</sup> *See* Case Nos. 08-02-02002336, 08-02-02000264, 07-01-18000518, 08-02-01002044, 08-01-02004131, and 08-01-02001037.

other areas of case review discussed in this letter, NSLS should use the management review of the non-LSC list to identify patterns to be corrected and persons who need targeted assistance. Then additional training or oversight can be provided directly to those staff requiring the additional oversight.

### *Client Retainer Practices*

#### *Scope and Subject Matter Description (CA-10)*

CA-10 of the prior report required NSLS to improve client retainer agreements to have a clear scope of representation and subject matter as required by 45 CFR § 1611.9, and to provide for a cross signature by program staff to indicate acceptance of the agreement. Pursuant to 45 CFR § 1611.9, recipients are required to execute a retainer agreement with each client who receives extended legal services. The retainer agreement must include 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).

After the issuance of the January 2006 Final Report, NSLS revised its retainer agreement and also created a separate Limited Assistance Agreement for PAI/VLP cases.<sup>21</sup> Further, NSLS advocates are now required to write in the scope and subject matter in the retainer agreement, where previously clients were allowed to complete the form. The review of sample cases evidenced that NSLS has made substantial improvements in compliance with 45 CFR § 1611.9. Most files reviewed that required a client retainer had an appropriately completed and executed form. Further, retainer agreements executed more recently were clearly reflective of the improvements adopted by the program.<sup>22</sup> NSLS was found to have substantially addressed the required improvements under CA-10.

However, there are two items for follow-up. First, there were several files in which a retainer was required, but one was lacking, with some of these being recent-year cases.<sup>23</sup> NSLS

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<sup>21</sup> It is noted that the revised program retainer has language allowing NSLS to obtain attorney fees. No compliance issue exists here, as the program has included that language only for certain contractual cases in which fees are allowed by LSC, and program management was well aware of the current restrictions on attorney fees set forth by LSC regulation.

<sup>22</sup> NSLS should also be aware that as of the February 2009 FUR, there were some open and active cases that contain a defective client retainer agreement executed a while ago -- for example with no clear scope or description of the subject matter. *See, e.g.* Case Nos. 06-01-18003160 (an open case begun in 2006 that had no retainer) and 01-02-16002656 (an open case begun in 2002 that had a blank retainer). For open cases that may continue forward for several years, NSLS should take steps to have staff execute a revised and sufficiently detailed retainer agreement.

<sup>23</sup> *See, e.g.,* Case Nos. 08-02-01002905 (closed 2008 case which was opened in 2008 without a retainer agreement), 08-01-02000295 (closed 2008 case which was opened in 2008 and had a blank retainer), 08-01-060002893 (a closed 2008 case which was opened in 2008, closed as an L, and did not have a retainer) – however, this file should be closed as a B closing code, thus eliminating the need for a retainer, and 08-01-01001809 (closed 2008 case with a missing hard file and no evidence of a retainer agreement).



management should ensure that its closing case review oversight system identifies individuals or units that lack full compliance with retainer practices, and should then take targeted action to improve these units or individuals.

Second, it is noted that different NSLS units have altered retainer forms to target their legal subject area. Most of these alterations were appropriate. However, there was one retainer form obtained by LSC during the February 2009 FUR, in which a pre-printed description of the client service was present, which could lead to compliance issues. The form was found in the “Civil – In Court” packet of intake materials. The form reads that the client asks NSLS to represent them in “Landlord Tenant Matter” (preprinted). This statement alone will not meet the requirements of 45 CFR Part 1611, as both scope and subject matter are required, and this statement fully lacks any element of scope. It is also possible that such a broad statement would also not properly describe the type of subject matter, as there are several types of landlord/tenant cases. NSLS should discontinue use of this form, adopt a new retainer form for this unit similar to the forms in use in other units, and ensure that scope and subject matter are clearly entered for all retainers in this unit.

### ***Private Attorney Involvement***

Related to case closing practices and the proper application of the LSC CSR Handbook, the January 2006 Final Report required NSLS to take corrective action to:

- Ensure that there is evidence of the legal advice provided in all PAI case files in which a private attorney did provide service (CA-14);
- Ensure that if no private attorney provided services in a designated PAI file that the file is either closed as a staff case, if staff provided legal advice, or the file is deselected from the CSR (CA-15);
- Cease the practice of automatically assuming that private attorneys who do not respond to case closing correspondence have provided legal advice (CA-22);
- Ensure that future audits include proper testing for PAI time charges and do not rely on set percentages (CA-23);
- Capture all legitimate PAI direct and indirect costs (CA-24); and
- Update its accounting manual to include the methodology for allocating common costs for PAI expenses (CA-25).

### ***PAI Case Legal Advice Documentation (CA-14, CA-15, and CA-22)***

Three of the January 2006 Final Report corrective action addressed necessary improvements involving documentation and proper handling of PAI cases: (CA-14, CA-15, and CA-22). The February 2009 FUR evidenced that NSLS actions were substantially effective in addressing these three items.

Interview of program management and staff involved with the PAI effort evidenced that the program ceased its prior practice of assuming legal advice in certain PAI cases (CA-22). NSLS

current policy is to obtain evidence of the legal advice provided in PAI cases prior to the case being acceptable for reporting to LSC. This change in practice was supported by the review of sample cases – overall, cases closed as PAI for inclusion in the CSR had appropriate documentation of legal advice.

Since the prior review, NSLS has created attorney and client referral letters, VLP attorney checklists, advice letters, and an attorney Final Disposition Form that the private attorney is asked to complete when the legal assistance has ended. This form includes a checklist and section for attorney notes. In addition to evidence of legal services that could appear on these forms, other evidence of legal assistance noted in PAI files included court orders and attorney certification regarding the outcome of legal representation at landlord tenant hearings. In addition, sampled PAI cases evidenced oversight and follow-up efforts required by 45 CFR § 1614.3(d)(3).

Finally, relevant NSLS PAI staff members are clear on when a PAI case should be recoded as a staff case, or when an attempted PAI case should be simply deselected from reporting (CA-14 and CA-15).

NSLS was found to have substantially addressed the requirements of CA-14, CA-15, and CA-22. However, there was a pattern of closing code errors found in the VLP unit. It appears that, to a great extent, the VLP unit ceased using the closing category “B”, and this category option does not appear on the disposition form provided to the private attorneys. As a result, some sampled files that should have used the “B” “Limited Service” category were instead closed as an “A”, Advice and Counsel.<sup>24</sup> As category “B” was continued by LSC in the 2008 CSR Handbook, in an altered form, the VLP should again use this category, and should revise all related case closing or disposition forms to allow for its use.

#### *Audit Testing for PAI (CA-23)*

The January 2006 Final Report required that future audits include proper testing for PAI time charges and not rely on set percentages (CA-23). The February 2009 FUR evidenced that NSLS appropriately instructed its auditor to cease using preset percentages and required its auditor to review samples as part of the testing of the PAI time and allocations. LSC was informed that the auditors adopted these instructions, now conduct testing for PAI, and have ceased using any preset percentages for PAI time allocations. NSLS has taken the required actions to resolve CA-23.

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<sup>24</sup> See Case Nos. 07-01-11003909, 07-01-11001138, 07-01-11003595, and 08-01-1100520, all of which were closed using “A” but where “B” was more accurate.

*PAI Cost Systems (CA-24 and CA-25)*

The January 2006 Final Report required NSLS to work to capture all legitimate PAI direct and indirect costs, and to update its accounting manual to include the methodology for allocating common costs for PAI expenses (CA-24 and CA-25). NSLS management provided an addendum to its Accounting Procedures Manual addressing how to account for direct and indirect PAI costs. Also, the program created an expanded general ledger account for PAI that was reviewed during the February 2009 FUR. This ledger is a cumulative listing of common costs associated with the PAI effort and, as of February 2009, it was current through November 30, 2008. NSLS also provided an employee list of all staff members, grouped by office, used to compute indirect PAI costs such as rent, telephone, parking, and storage costs. The above documentation, and testing of related records during the FUR, indicated that NSLS has taken sufficient actions to address CA-24 and CA-25.

***Timekeeping***

*General Timekeeping Practices (CA-11)*

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

Under CA-11 of the January 2006 Final Report, NSLS was required to take corrective action to ensure adequate time data entry by staff. To address this area, NSLS provided training for staff, required managerial oversight of cases, and otherwise took substantial corrective action to see that complete time recordation occurred in active cases. All cases tested and time tests conducted in the February 2009 FUR evidenced the recordation of time in a contemporaneous manner, as required.<sup>25</sup> As such, the February 2009 FUR found that NSLS has taken effective corrective action to correct the *prior* timekeeping issues of the report issued in 2006. However, the February 2009 FUR also found some new (but somewhat limited) timekeeping issues that warrant continued or future corrective action by NSLS, as discussed below.

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<sup>25</sup> An in-depth review of the associated timekeeping records for a diverse sample of 24 cases was conducted during the February 2009 FUR. The nature of the cases reviewed ranged from welfare, to senior citizen, to disability, housing, bankruptcy, mental health, and landlord/tenant disputes.

### *Time Increments*

The first issue noted is that NSLS allows for two different timekeeping units of measure. This has resulted in some uncertainty for time summarization. Time was either recorded in actual minute increments (such that .25 would mean 25 minutes) or time was kept in 15-minute increments, added in quarter hour units of .25 (such that .25 would mean 15 minutes). This is confusing and problematic.

The dominant method adopted by staff is to record time in 15-minute increments recorded in 0.25 measures. Most files consistently documented time entries in clearly delineated quarter-hour segments, such as .25, .75, 2.25, etc. However, two of the 24 cases sampled interchangeably used the 0.25 quarter-hour increments along with various other time increments (i.e. 0.08, 0.17, 0.33, and 0.42). To easily aggregate the total the time attributed to cases using two different value systems would be difficult, or even impossible. Allowing two different measures of time increments would make any computer-generated time summaries unreliable. Assuming that the computer recognizes .25 as 15 minutes, those cases that use .1 increments would be miscalculated.

As one of the regulatory purposes of timekeeping is so that aggregate data can be compiled, this dual numeric system should be ended, and one uniform system of measurement adopted for use by all NSLS staff. NSLS should take corrective action to adopt a unified numeric recordation system for all casehandlers and cases.

### *Location of Case Notes*

The second significant issue noted relates to where detailed time recordation may be maintained. NSLS allows the detailed records of time charges to be recorded in two different places – with NSLS allowing staff to choose. The first option is that staff may maintain their detailed case notes, including legal advice, case strategy, etc. directly in the “timeslips” system. With this choice, staff would then not use the ACMS case “notes” section. The second option is that staff would enter a basic justification of the time charge into the “timeslips” system, and would then use the ACMS notes section for more detailed case notes.

In the first instance above, LSC access to the time records was restricted by NSLS, as staff had included confidential client or case service information as part of the basic timekeeping record. In contrast, in the second instance, it was simple for LSC to provide oversight during the review by conducting testing and physically inspecting the corresponding records. NSLS should remedy this, and should adopt a unified timekeeping system that allows full access to the core timekeeping records to LSC or other relevant oversight bodies. The above could be addressed by simply requiring all staff members to maintain their detailed case notes in the ACMS notes section, and then to make more generalized, but sufficient, notations of how time was spent in the “timeslips” system.

### *Time Charges Lacking Description*

A third issue noted was that several large time entries without any supporting description to support the time were found in one substantial file (which included ongoing complex representation). A secondary review of the case file (with use of an intermediary) to determine support for these charges found no clear case notes entered for the dates in question such that the time appeared unsupported. These time charges were between three to eight hours each and had no clear detail in either the file or the time system as to the exact nature of the work conducted.

At the request of the FUR visit team leader, the NSLS Executive Director took this file for his review. Upon review and discussion with the NSLS Executive Director, the file was found to have substantial work such as legal research and pleading drafting *around the times of the large time entries*. LSC was therefore able to reasonably conclude that the time charges were for actual work, and not false entries. However, entry of numeric time amounts with no supporting description does not meet regulatory requirements. NSLS should take targeted corrective action for the involved staff to ensure that all future time entries are supported by an adequate detail to indicate the work conducted.<sup>26</sup>

### **Additional Observations from the February 2009 FUR**

#### ***Program Asset Ceilings Policy***

Since the prior October 2004 visit, LSC updated 45 CFR Part 1611, and in response NSLS changed its related policies and practices. However, the policy effective at the time of the February 2009 review required some further revisions so as to be fully consistent with the revised regulation. In addition, some additional recommendations (not requirements) were provided to NSLS management regarding possible simplification or clarification of its current policy.

At the end of the February 2009 FUR, NSLS management expressed interest in quickly amending its asset ceilings policy with the input of LSC (as offered). Immediately following the review, the FUR team leader worked with NSLS management to clarify the necessary changes and the recommendations. In a subsequent follow-up conversation, NSLS management indicated that the need for revisions had already been brought to the attention of the NSLS Board, and that a new policy will be presented for the Board at its next meeting in April 2009.

The areas of the program's policy that required change are:

- Under Section B(2), the statement regarding automobiles should be revised to make clear that a vehicle *used for transportation*, regardless of its value, may be excluded under the

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<sup>26</sup> This remedy need not be complicated. For example, a time entry of "5" hours that contains detail that the block of time was used for legal research on a certain novel issue could likely be sufficient to justify such a large block of time.

LSC regulation.<sup>27</sup> The program's policy was to allow for the exclusion of one automobile without requiring that the automobile be used for transportation;

- Under Section B(5), the NSLS board should either justify or drop this exception as it is not found in the allowable asset exemptions in the LSC regulation and must therefore be specifically sourced from an allowable state or federal law; and
- Under Section (C), the introductory statement regarding the applicable exception programs should be simply revised to clarify that the list of programs have been affirmatively chosen by the NSLS board. The current open ended language that reads "The programs *include*..." should be removed to favor language such as "These programs are..."

In addition to the above, it was recommended that NSLS revisit Section B(6) (allowing exemption of assets under New York State or Federal Law). In particular, it was recommended that these sections be expanded to actually list those assets that are exempt. This would improve the policy on its face and provide a clear guide for staff as to what assets should be included or excluded. Related to this, it was discussed how NSLS may also decide to selectively choose which assets it wished to exclude under such other laws, but that it could do so in concert with an overall increase in the asset ceiling amount. The NSLS current asset ceiling starts at just \$5,000 for the first family member.

### ***Proper Treatment and Recordation of Over-Income Exception Cases***

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), a program must 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.

Sampled cases evidenced compliance with income screening and documentation requirements for clients under the 125% basic eligibility level. However, sampled cases evidenced some non-compliance with the proper protocols and documentary requirements for accepted clients whose income falls *between 125% and 200%* of the FPG.

After the prior visit in October 2004, NSLS took actions to require staff to review all of the factors of the prior Part 1611 regarding over-income eligibility, as was then required. However, case review evidenced that several staff then did not take the necessary *second step* of recording which exact factor(s) were relied upon in making the exception to standard income levels. Numerous files reviewed in the February 2009 FUR had no selection made regarding which factor(s) were used for over-income case acceptance. Intermediaries with whom the LSC team interacted stated that in these cases that all factors were *considered* (as was then required). It

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<sup>27</sup> The LSC regulation allows for the exclusion of any vehicle as long as it is used for transportation.

appears that staff members were unclear that they must also specify the factor(s) *relied upon* for the ultimate decision of eligibility, thus failing full compliance with the regulation.<sup>28</sup> This mistake appears clearly to have been made in good faith, as there was a strong effort by NSLS management to emphasize with staff that all factors should be part of the assessment. It appears that this emphasis confused or blurred the need to also document which factor(s) were used in making the decision to serve the client.

Quick correction of this issue should be undertaken by NSLS, and should be relatively simple. As the regulation has since been updated, no longer requiring the consideration of all factors, the necessary corrective action can be greatly simplified by NSLS. Through appropriate communications, emphasis needs to be placed on a change in practices, and that the critical requirement is to record the factor(s) relied upon by the program for the over-income case acceptance. These efforts might also be positively improved by supplemental training efforts, as NSLS deems necessary. However, this effort must include future review of cases at time of closing to ensure that the appropriate recordation of the exact factor(s) was completed.

Also to support these efforts, a change to the ACMS is warranted. At the time of the February 2009 FUR, the ACMS did not require the selection of one or more factors when a client's income was over 125%. As done in other LSC programs, the ACMS could be changed so as to require the selection of one or more factors as authorized by the regulation, whenever an applicant's income falls between 125% and 200%. This has been effective in other programs as it prompts staff to make the necessary notations. Further, having this within the ACMS would have the positive and immediate effect of forcing a program-wide change in practices.

The lack of clear documentation of the exact factor(s) discussed above did not arise to the level of a significant compliance issue, however. During case review, when LSC explained that it needed to know the actual factor(s) relied upon, intermediaries were frequently able to identify information in the files sufficient to warrant application of one or more of the authorized exceptions enumerated at 45 CFR § 1611.5, thus indicating that acceptance of the client was proper under the regulation.

However, these discussions with intermediaries evidenced one particular factor for which some staff members require clarification. In some cases intermediaries stated the exception (factor) was most likely that the applicant was "unable to hire an attorney". The intermediaries were making reference to the NSLS income eligibility policy and 45 CFR § 1611.5(a)(vii) which states that a recipient may consider other significant factors that the recipient has determined affect the applicant's ability to afford legal assistance. However, for future files, where NSLS

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<sup>28</sup> See, e.g., open Case Nos. 04-02-13000776, 06-02-13000020, 00-01-13002310, 00-01-13004900, and 01-02-13004338 See also, closed 2008 Case Nos. 08-01-01000360 and 08-01-01000688. See also, Case Nos. 05-01-01001143, 07-01-11000179, 07-01-11001193, 07-01-11000234, 07-01-11004768, 07-01-11003943, 07-01-11001832, 06-01-11000539, 06-01-11000729, 08-01-11001488, and 08-01-04001440.

relies upon this factor, the program staff, under 45 CFR § 1611.5(b), *must also document* the significant factors that affect the applicant's ability to hire an attorney. This additional documentation is particularly important when the applicant has assets such as a bank account or other available funds.

### ***200% FPG Miscoding***

There was a significant coding issue noted in case review, which manifested as a violation of the 200% income level restriction of 45 CFR Part 1611. Four files reviewed were indicated as LSC-eligible and/or were assigned to LSC funding but the client's income exceeded 200% with no appropriate evidence allowing LSC maximum income exception. In all four cases it appears that these were simply miscoded by staff – one open VAWA file, Case No. 05-04-18000251, should not have been on the LSC-eligible list. In the three other cases found, closed 2008 Case Nos. 08-01-02002066, 08-01-02004131, and 08-01-02001037, the NSLS intermediaries stated to LSC representatives that simply the wrong funding code had been assigned. NSLS must improve either its year-end or ongoing (or both) case oversight/case closing review systems so as to timely identify miscoded cases and make necessary corrections.<sup>29</sup>

### ***Record keeping Retention Requirements***

Pursuant to the authority granted to LSC by 42 U.S.C. § 2996g (b), LSC has required, via a December 1997 letter to all recipients, that closed client files be retained for a period of five years. In this December 1997 letter, LSC stated that if State law had a retention period of less than five years, the program should follow the Corporation's five-year retention period. LSC also stated that if State law required a retention period more than five years, that programs should then adopt that standard.

NSLS does not disagree with the five-year retention policy or practice established by LSC. However, NSLS needs to ensure that its five-year policy is being properly followed. There were several files that were unable to be located during the review -- some of these files appeared to be only a coding or ACMS issue. In such files, the case would have been properly closed and subsequently destroyed years ago, and its inclusion on a currently open list was the error, not the untimely destruction of the case file. However, in other files, it was uncertain the cause of the unavailable records. In at least one example, a unavailable case file was represented as being incorrectly destroyed five years after the *open date* instead of five years of the closed date as required.

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<sup>29</sup> As an extra check at year-end, it is noted that some LSC-funded programs will run case lists of any case that is over 200% of poverty that is also indicated as LSC-eligible or CSR reportable. Such a targeted case list could help NSLS to quickly identify missed cases. However, the ultimate method for proper case coding, is to have an effective ongoing case review process that will identify staff or units whose practices need change, and then to specifically work with those staff or units to ensure proper practices.



NSLS needs to have the responsible administrative or management staff review the program's file retention practices to ensure that all file retention is consistent with the five-year requirement.

### *Internal Controls*

Consistent with updated OCE on-site protocols to review elements of financial internal controls, some testing was conducted during the February 2009 FUR. A detailed review of the vendor information list was conducted and 18 vendor charges were selected for in-depth assessment. This review evidenced some deficiencies, as discussed below. Overall, these deficiencies were significant as they not only involved LSC funding, but also illustrated a clear need to improve various internal control practices and related policies.

#### *Request and Approval by Same Staff*

In December 2008, a member of NSLS management, via the normal check requisition form, submitted a request for reimbursement of \$30.00. However, this person then signed the form, and was the only person who approved the expense for payment. Based on this signature alone, the request was completed and a check issued. The NSLS requisition form allows for a second signature, but none was present in this instance. Thus, NSLS allowed for the same person to both request a check disbursement and to then approve the disbursement. This type of practice lacks good internal controls and should be ceased.

#### *Payment Not Fully Supported by Submitted Documentation*

In the same disbursement discussed above, the supporting receipt for the expense indicated a total charge of \$27.65, but the check was issued for \$30.00. It is clear in context that the difference of \$2.35 was used as a tip for the service provided – however this should have been clearly described on the attached receipt. In the absence of an explanation or justification for the requested payment of \$30.00, the NSLS accounting department should have either obtained the additional supporting documentation, or should have issued a check for only the amount that was supported (\$27.65).

#### *Prohibited Entertainment Expense – Alcohol*

In December 2008, a restaurant/caterer vendor received payment in the amount of \$2,726.70 for the catering of the program's holiday party. The invoice detail included a charge for "consumo" in the amount of \$180.00 that was for wine served. The NSLS accountant was instructed to re-categorize this amount of \$180.00 for payment from non-LSC funds. NSLS upper management evidenced to the LSC team that it had been their clear instruction that the entire holiday party invoice was to be charged to non-LSC funds. As such, this allocation of alcohol to LSC funding was a staff error. However, the fact that it occurred indicates that insufficient internal controls may exist so that such items are properly and timely identified by the program and corrected.

NSLS needs to determine whether sufficient internal control systems and proper oversight exists to ensure that items dedicated by management to a specific grant are in fact correctly charged to that grant. In particular, NSLS must ensure that no alcohol purchases are ever made with LSC funds.

LSC, through the OCE, will follow-up with NSLS management to ensure that a corrective entry is completed for this expense discussed above.

### *Travel Reimbursement Policies and Practices*

Review of the application of, and experience with, the current out-of-town NSLS travel and meal reimbursement process found that NSLS should consider updating its policy to allow for easier understanding and application by staff. One instance of a staff member conducting out-of-town travel found a mistaken charge for meal reimbursement for a time period in which they were not entitled for the reimbursement. This was discussed with NSLS management and was determined to have been a simple mistake. However, during this discussion, NSLS noted that the travel policy was very old and indicated interest in updating the policy. Subsequent to the February 2009 FUR, additional assistance and information was provided to NSLS by OCE regarding comparative travel policy standards. As part of this, it was recommended that NSLS consider adopting the government standards for travel and meal limitations, which are adjusted annually to account for significant changes in regional cost variations.

### *Recommendations*

1. Ensure intake staff conducts complete and accurate intake screening and documentation which can be accomplished through the institution of a system of periodic reviews of a sample of intakes for every staff member involved with intake. These reviews should be conducted at least every six months, if not more frequently, and should be designed to identify any issues that need to be corrected at the individual staff, unit or office level;
2. Ensure that all intake forms comply with LSC regulations and NSLS policies. Any additional unauthorized and/or inadequate intake forms should be discontinued from use;
3. Consider expanding the duties of the Intake Coordinator or similar position to include more oversight and case checking activities (as envisioned by the job announcement) so as to serve management's goal to ensure proper intake practices by all staff and units; and
4. Ensure that all LSC-eligible cases are reported in CSR data conducting additional periodic and/or year-end review of closed cases initially coded as non-LSC funded/non-LSC reportable with the goal of identifying any additional cases that can be reported to LSC, and make the appropriate re-coding for such cases. As with other management oversight systems conducted by the program, this review process should areas of case review discussed in this letter, NSLS should identify individuals or units that lack the

proper case coding practices, and then NSLS should take the necessary actions to improve the practices of these units or individuals.

***Future Corrective Actions***<sup>30</sup>

To ensure continued or full compliance with those program elements reviewed during the February 2009 FUR and discussed above, NSLS should:

1. Take additional and effective efforts to end dormant cases remaining in the open case list. As part of this, uniformly run periodic lists of all cases that lack time charges for six months and require that either a time charge be entered justifying the case as remaining open, or the case is closed. Related to this, ensure that when dormant cases are closed, that defective or dormant files are properly deselected from reporting;
2. Reassess the closing case review that was adopted and implement changes to ensure effective management oversight review of cases at the time of case closing. The goal of such oversight should include the identification of any error patterns or persons who need targeted assistance. This review should ensure that cases over the 200% FPG level served by other funding are properly excluded from the CSR. Also, this review system should identify individuals or units that lack full compliance with retainer practices, and then NSLS should take the necessary actions to improve the practices of these units or individuals;
3. Question and improve the program's use of the revised closing category "K" as this closing code was found to be misunderstood and misused;
4. Discontinue use of the civil unit retainer form that provides a preprinted statement of the service to the client;
5. Update the CSR closing category forms present in the client intake packets;
6. Ensure that the closing category of "B" is provided as an option for PAI case closure and ensure that proper use of this category is understood for use by that unit;
7. Complete the revision of the program's basic assets policy, as described in this letter;
8. Ensure that staff begin to clearly record which factor(s) were relied upon when determining to accept a client whose income falls above 125% of FPG;

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<sup>30</sup> If NSLS management has any questions regarding the following corrective actions, or would like to request assistance in implementing them, please feel free to contact the team leader for the February 2009 FUR.

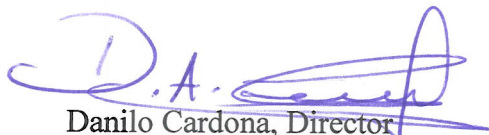
9. Implement the following three changes regarding timekeeping: select one unit of measure to be uniformly used by all staff; select one location for the recordation of the description of time charges while requiring that detailed case notes be maintained solely in the case file; and ensure that the remaining staff who have made time entries without any description of the related activities conform their recordation practices to comply with NSLS standards and regulatory requirements;
10. Have the responsible administrative or management staff review the program's file retention practices to ensure that all file retention is consistent with the five-year requirement;
11. Review and enhance internal control procedures to ensure that directives from management as to cost allocations to various grants for targeted expenses is properly effected. Related to this, ensure that no alcohol purchases are charged to LSC funding, and take specific action to reallocate the December 2008 alcohol charge of \$180.00 to a non-LSC funding source;
12. Review and enhance internal control procedures to ensure that the same staff member cannot both request a check disbursement and also provide the sole signature approving the payment; and
13. Review and enhance internal control procedures to ensure that reimbursement payments are provided only for the exact amount that is fully and adequately supported.

Sincerely,

Danilo Cardona, Director  
Office of Compliance and Enforcement

9. Implement the following three changes regarding timekeeping: select one unit of measure to be uniformly used by all staff; select one location for the recordation of the description of time charges while requiring that detailed case notes be maintained solely in the case file; and ensure that the remaining staff who have made time entries without any description of the related activities conform their recordation practices to comply with NSLS standards and regulatory requirements;
10. Have the responsible administrative or management staff review the program's file retention practices to ensure that all file retention is consistent with the five-year requirement;
11. Review and enhance internal control procedures to ensure that directives from management as to cost allocations to various grants for targeted expenses is properly effected. Related to this, ensure that no alcohol purchases are charged to LSC funding, and take specific action to reallocate the December 2008 alcohol charge of \$180.00 to a non-LSC funding source;
12. Review and enhance internal control procedures to ensure that the same staff member cannot both request a check disbursement and also provide the sole signature approving the payment; and
13. Review and enhance internal control procedures to ensure that reimbursement payments are provided only for the exact amount that is fully and adequately supported.

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