



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

Neighborhood Legal Services Program
of the District of Columbia

Case Service Report/Case Management System Review
February 7-11, 2011

Recipient No. 309080

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that the NLSP automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, some improvement in a few case coding practices is warranted.

Finding 2: Overall, intake practices were strong. NLSP staff consistently screen applicants for required income, assets and other eligibility data. However, the income and assets policy provided in advance of the review was outdated and needed revision, which NLSP addressed immediately following the review by providing a new draft to LSC. Also, improvement to the group eligibility screening practice is necessary.

Finding 3: Sampled cases evidenced that NLSP maintains the income eligibility documentation required by 45 CFR § 1611 and CSR Handbook (2008 Ed.), § 5.3.

Finding 4: NLSP maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: NLSP is in compliance with the prohibitions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, there were a few cases in which the necessary level of required documentation was not obtained prior to commencement of work on the case.

Finding 6: Sampled cases evidenced that NLSP is in substantial compliance with the retainer agreement requirements of 45 CFR § 1611.9.

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

Finding 8: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, additional training and direction for staff is needed to ensure consistent application of case acceptance priorities for advice and counsel or brief service cases.

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

Finding 10: The program’s application of the CSR case closure categories under Chapters VIII and IX, CSR Handbook (2008 Ed.) were generally strong. There were a few exception patterns noted requiring correction. Also, NLSP was in substantial compliance with the use of problem codes.

Finding 11: Sampled cases evidenced substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 (Timely Closing of Cases).

Finding 12: Extensive testing of potentially duplicate cases evidenced substantial compliance with CSR Handbook (2008 Ed.), § 3.2. NLSP both avoids duplicate case reporting as well as correctly reports multiple unique cases when required by the CSR Handbook. However, further training of staff regarding one duplicate rule regarding certain related “A” level cases, is needed.

Finding 13: Review of outside practice activities and related program practices evidenced compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: Sampled cases, sampled financial records, and interviews with staff evidenced compliance with 45 CFR Part 1608 (Prohibited political activities).

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

Finding 16: During 2010, NLSP took significant steps towards improvement of its PAI program organization and PAI compliance systems, including related documentation, policies, procedures and practices. NLSP is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. However, NLSP must adopt a new indirect cost allocation method for PAI.

Finding 17: NLSP is in compliance with 45 CFR § 1627.4(a) that prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 18: Sampled program financial and case records indicated substantial compliance with the requirements of 45 CFR Part 1635 – Timekeeping requirement.

Finding 19: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys’ fees) during its effective period.

Finding 20: Sampled cases reviewed and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 21: Sampled cases and interviews with staff evidenced NLSP’s 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 22: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 23: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 24: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 25: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

Finding 26: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 27: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 28: Sampled cases and interviews with staff evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

Finding 29: NLSP has not been providing the required notice to private donors required by 45 CFR Part 1610.5(a).

Finding 30: A limited review of NLSP internal control policies and procedures demonstrated that the program's policies and procedures generally compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed). However, weakness in one (1) area was identified.

Finding 31: A review of several outstanding LSC Technology Innovation Grant ("TIG") balances evidenced that NLSP fiscal records show an unexpended TIG grant fund balance since 2007 of at least \$16,479.

Finding 32: Bank reconciliations are being performed monthly and timely. NLSP pays a monthly fee on one of its operating accounts, which is unnecessary.

Finding 33: The NLSP Accounting Manual needs to be updated and revised.

II. BACKGROUND OF REVIEW

During the week of February 7-11, 2011, the Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) on-site review of Neighborhood Legal Services Program of the District of Columbia (“NLSP”). The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the LSC Accounting Guide for LSC recipients (2010), and the Property Acquisition and Management Manual. A team of three (3) LSC staff conducted the review, consisting of two (2) attorneys and one (1) fiscal reviewer.

The on-site 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 NLSP has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed NLSP for compliance with the regulatory requirements of: 45 CFR Part 1604 (Outside practice of law), 45 CFR Part 1608 (Prohibited political activities); 45 Part CFR 1609 (Fee-generating cases); 45 CFR 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity¹); 45 CFR Part 1611 (Financial eligibility); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Part 1613 (Restrictions on legal assistance with respect to criminal proceedings); 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1615 (Restrictions on action collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1620 (Priorities in use of resources); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1642 (Attorneys’ fees)²; 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing); and Section 1007(b)(8) – (10) of the LSC Act, 42 USC §§ 2996f(b)(8) – (10) (Abortion, school desegregation litigation, Military Selective Service Act or desertion).

In addition, targeted financial reviewing was conducted through review of program internal controls, and testing of program records and interview of financial staff and program management. Fiscal areas reviewed included, but were not limited to, 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); and 45 CFR Part 1635 (Timekeeping requirement). Fiscal records were also reviewed for compliance with 45 CFR Part 1608 and 45 CFR Part 1610. In addition, assessment of current fund balances for several LSC Technology Innovation Grants (“TIG”) was conducted. The general review period was from January 1, 2009 through February

¹During the visit discussed in this report, program integrity was not comprehensively reviewed, as compliance with Part 1610 program integrity is done pursuant to a separate, specialized OCE visit. In the current visit, program integrity was only covered to the extent that any potential factors that could affect compliance with this regulation section were observed and documented, and then brought back to LSC for further assessment, if any.

² On December 16, 2009, the enforcement of this regulation was suspended and the regulation was later revoked during the LSC Board of Directors meeting on January 30, 2010. During the instant visit, LSC’s review and enforcement of this regulation was, therefore, only for the period prior to December 16, 2009.

2011; however, the fiscal review period was open-ended regarding past years due to issues related to long-existing fund-balances that were reviewed.

In advance of the visit, NLSP was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12 and the LSC *Access to Records* protocol (January 5, 2004). Access to sample case information was accomplished through an intermediary system, as set forth in an advance agreement with the program. The program provided full access to all staff, records, and information required to effectively conduct the review.

The program has offices in three (3) locations: The headquarters is located in Northwest D.C. on Rhode Island Avenue (“RI”); a Southeast Neighborhood Law Office located on Martin Luther King Avenue (“MLK”); and a far Northeast/Southeast Neighborhood Law Office located on Nannie Helen Burroughs Avenue (“NHB”) in Northeast. The three (3) offices are also referred to by their street title or the street name abbreviation as noted above. In accordance with an approved work plan, both open and closed cases were sampled with a substantial majority of the cases fully reviewed being randomly selected. The remaining files were targeted as selected by the review team. Approximately 165 cases were fully reviewed using the LSC Data Collection Instrument (“DCI”). Another group of approximately 40 cases received a limited review to test for one (1) specific compliance area only, such as duplicate case testing or problem code usage.

In 2009, NLSP reported a total of 1,778 cases, and in 2010, 1,627 cases in their CSR submission. The program’s 2009 self-inspection indicated that exceptions were found in: proper documentation of legal advice; Part 1626 documentation; and one (1) case that was over-income. The program’s 2010 self-inspection indicated only two (2) exception cases were noted, both involving duplicate reporting. In both years, NLSP took corrective action prior to final CSR reporting.

Overall, NLSP has generally strong basic compliance systems, with strong staff awareness of necessary rules and restrictions affecting case handling and other work. In addition, the review evidenced that NLSP overall has properly implemented the 2008 CSR Handbook. Also noteworthy, the corrective actions from OCE’s most recent August 2003 visit Final Report were found to have been fully implemented, in operation, and were compliant during this review.³ A few new areas of recommended improvement or necessary corrective action were noted during the instant February 2011 review, as discussed in this report.

NLSP was given an opportunity to comment to a Draft Report (“DR”), and was provided an extension to provide its comments. The program’s comments were received on October 5, 2011. The comments were incorporated into this Final Report (“FR”) and the comments themselves, along with two (2) appendixes to the comments are attached in their entirety to this FR as an exhibit.

³ There were seven (7) Required Corrective Actions from the prior review. Of these, one (1) involved a prior LSC policy requirement which is now outdated (regarding over-income factor application). The remaining six (6) issues were found to now be compliant according to testing conducted during the February 2011 review.

III. FINDINGS

Finding 1: Sampled cases evidenced that the NLSP automated case management system (“ACMS”) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, some improvement in a few case coding practices is warranted.

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, the ACMS system of NLSP is overall sufficient to ensure that information necessary for the effective management of cases is timely and accurately recorded. There were minor instances of differences between file and ACMS data, but mostly these involved the ACMS indicating a problem code that was incorrect based on the actual work evidenced in the file. These mistakes were likely a choice made by a staff member, and not any weakness in the ACMS. This is discussed more fully, *infra*.

Also, discussed *infra*, there were a few sampled cases that were indicated in the ACMS as a staff case, but that should have been tracked as a PAI case. However, going forward, NLSP is assigning all open PAI cases to a specific staff member’s code. This staff member will then ensure that all such cases are tracked and then reported as PAI if the criteria for a PAI reportable case are met.

Case Lists

In the advance case lists provided by the program, there were a few potential errors that led to follow-up requests to run new lists or to check the accuracy of the information provided. This presented some initial lack of confidence in certain advance case lists provided.⁴ Also, during the review, several selected cases were noted as assigned to a particular office, but were actually being handled or located at another office.⁵ The open case list for the MLK office was

⁴ For example, some initial closed 2009 case lists had been restricted accidentally to only cases that were both closed and opened in 2009.

⁵ This category of cases did not present a significant issue and is caused by the program’s movement of staff between offices, including promotion of some staff with a change of location. Also, this is not a compliance issue per se, and was raised mainly due to the methodology by which LSC requests advance materials by office. These cases would be accurately reflected on case lists run by advocate identification, as they stayed assigned to the same staff person despite the person’s movement between offices. However, as LSC requests lists by office location for purposes of case selection, it is recommended that both NLSP and OCE take note of this issue for future OCE trip planning. Due to the relative small number of staff and offices, and the normal movement of staff between offices, it may be advisable to request open case lists by both office and advocate to ensure adequate advance review of case lists.

significantly affected in this manner. However, a new and accurate open case list for that office was quickly provided during the review.⁶

Due to the above observations about the case lists, a comprehensive testing of the accuracy of the reported CSR data was conducted. Program staff were requested to produce a printout of all cases reported to LSC for both staff and PAI for sample years and to otherwise demonstrate that the ACMS could match reported case numbers with actual files. These lists were created, printed and reviewed with staff. This testing evidenced that NLSP was able to produce case lists that matched sample prior year CSR numbers, providing confidence in the ultimate CSR reporting by the ACMS and in NLSP's ability to track cases necessary for reporting to LSC.

Due to the number of cases that were coded to one office that were actually being assisted or stored in another office, an improvement to re-coding of cases is recommended. As part of staff transferring between offices, it would strengthen NLSP case filing procedures to have the electronic file clearly identify where the file is being maintained, especially if open.

Case Filing System

Unrelated to the above, there were some selected sample case files that were unable to be promptly located by the program. Some cases were found during the review while others were not. There were seven (7) files that could not be located during the CSR/CMS review. In response to this issue, NLSP was asked to continue searching for the files subsequent to the visit and report the results. After the visit, by telephone conversation, program staff reported that all cases but one (1) were located. The final case was opened in 1997, was dormant and inactive, was likely inappropriate as an open case, and should now be closed in the ACMS in a manner as to not be reported to LSC.

In its comments to the DR, NLSP stated that it agreed with this report finding, and further noted that it would be closing the remaining inactive case noted above, and that this case would not be included in a CSR.

Finding 2: Overall, intake practices were strong. NLSP staff consistently screen applicants for required income, assets and other eligibility data. However, the income and assets policy provided in advance of the review was outdated and needed revision, which NLSP addressed immediately following the review by providing a new draft to LSC. Also, improvement to the group eligibility screening practice is necessary.

Intake procedures were reviewed in all three (3) program offices. The intake procedures conducted by each office are substantially similar. NLSP conducts a majority of its intake over

⁶ For the MLK office, the open case list provided in advance of the review was substantially inaccurate -- a list dated December 15, 2010 showed only 18 cases. When shown to the MLK managing attorney during the visit to that office, she commented that the list had to be in error as she alone had 15 open cases. In response, program management was asked to recreate an accurate open case list for use in that office. An updated list was immediately provided and additional cases were selected and sampled. These program actions, along with the small size of the office and the corresponding small case sample size, allowed the review to that program office to be fully completed.

the telephone, and also performs in-person intake screening for some walk-in applicants. Both telephone and in-person intake processes use the Kemps ACMS, with applicant data entered directly into the computer. Conflicts checks are routinely done at the beginning of the screening process through the ACMS, after the applicant provides their name and all relevant party information. The ACMS will also check for any duplicate case files.

If the applicant appears eligible an “Attorney of the Day” (“AOD”) system is used whereby the intake person can accept the case and create a physical case file, and then arrange a meeting with the AOD (by telephone if the attorney is out of the office, or in-person if the attorney is in the office). After an AOD or other staff attorney speaks with the client and provides brief advice, if the attorney believes that representation of the client should extend beyond brief services, an Individual or Limited Retainer Agreement is completed and signed by the client. The client is informed that his/her case will still need to be accepted for further representation. Case acceptance for extended representation is conducted during a weekly attorney meeting.⁷

The intake procedure for telephone applicants mirrors the in-person intake procedure, with respect to the eligibility screening. With telephone applicants, the intake staff obtains the applicant’s verbal citizenship attestation or alien eligibility verification over the telephone at the beginning of the intake interview. If the AOD decides that further assistance is necessary above counsel and advice or brief services, the client is instructed to make an appointment to meet with the AOD for further consultation at which time the citizenship attestation and signed retainer agreement are obtained.

If the applicant appears to be ineligible based on the reported income or assets, intake staff may complete a *Record of Authorized Exception to Income Limitation* and present it to the Executive Director for consideration.

A citizenship attestation is routinely obtained for in-person applicants by staff intake workers on a form that complies with 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5. Assessment of intake in the three (3) program offices evidenced strong practices regarding execution of citizenship attestations for walk-in clients, performing conflict and duplicate checks during the initial intake process, and screening an applicant for reasonable income prospects as required by 45 CFR § 1611.5(a)(4)(i). However, it is noted that there is not a specific written question in the ACMS regarding reasonable income prospects. The DR directed that NLSP add a simple question to the ACMS intake system to prompt this question as part of the written intake system. In conversations with management during the comment period, it was noted that this change was adopted when the program updated its ACMS in early 2011.

The intake interviews indicated that intake staff is aware of the income ceilings set by NLSP. Intake staff also demonstrated appropriate understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-2, Violence Against Women Act 2006 Amendments, with respect to

⁷ Although it is not a best practice to complete a client retainer with the client’s signature prior to actual full case acceptance, the manner in which NLSP makes clear to each person that full case acceptance has not yet occurred, provides at least some clarity to this process. However, LSC recommends that NLSP adopt a clear rule and practice to ensure that staff members do not sign such retainers until after a case has received full approval and full acceptance. Such a practice will prevent an applicant/case having a fully executed retainer for a case that is ultimately not accepted.

intake screening. Further, staff understood the process of obtaining factors where an applicant's income is between 125% and 200% of the Federal Poverty Guidelines ("FPG").⁸ However, there was some variation in how staff recorded the factors considered for applicants between 125% and 200% of FPG. Some staff would deduct factors from the income, while other staff would simply list the factors and their dollar values, and then accept the client based on those factors. It is best for NLSP to have one practice, and unless using a formal spend down system, the listing of the factors and their dollar values, and acceptance based on those listed factors, is fully sufficient. NLSP should decide the method of over-income factor recordation and acceptance that will apply to all cases and train staff to ensure consistency of approach.

In its comments to this DR section, NLSP agreed with most of this section's findings, and noted that it appears not all staff may have understood some NLSP policies. The comments then described efforts taken to correct this situation. The comments stated that, in 2011, NLSP revised its Legal Representation Manual and its Administrative Manual to make these documents more comprehensive and easier to follow. Comments noted that these changes directly address the concerns raised by LSC. Comments also noted that all staff will receive copies of the new manuals and that another training session on intake and other topics will be conducted in the near future. Finally, NLSP noted that it has conducted periodic training on intake practices in the past.

Group Eligibility

Intake staff reported that they do conduct eligibility screenings for group applicants. When screening a group applicant for eligibility, intake staff obtains the group's financial information to determine if the group is comprised primarily of individuals who would be financially eligible for legal assistance. However, NLSP does not request information showing that the group does not have private counsel and does not have the means to obtain private counsel, as required by 45 CFR § 1611.6 (a). The DR requested NLSP to take corrective action to adopt a clear practice and/or form to guide group eligibility screening to fully screen for all required elements. In conversations with NLSP management during the comment period, it was stated that this change was made and the group eligibility form revised to reflect LSC's comments.

Outreach

All offices conduct educational outreach at various locations but not for purposes of conducting intake.⁹ At the outreach initiatives, if a person requests to speak with a program attorney or to receive legal advice, they are instructed to call an NLSP office in order to be screened and have their legal concern addressed through the regular intake system. Neither a full intake screening nor legal advice is provided as part of the outreach events.

⁸ However, NLSP should ensure that all intake staff properly understand and apply the exception regarding "educational activities in preparation for employment". This factor is limited to actual expenses for direct activities, and does not include any estimated expenses, such as valuation of time spent searching for work.

⁹ For example, the RI office conducts outreach in partnership with the following entities: North Capital Collaborative Co-Op, Department of Justice, March's Funeral Home, and CentrioNia. The MLK office conducts outreach in partnership with Highland Dwellings Together We Stand Legal Action Group and University of the District of Columbia Housing Development Clinic.

Part 1611 Policy

Review of the existing NLSP intake and assets policy was conducted in advance of the review with the support of the LSC Office of Legal Affairs (“OLA”). This policy needed simplification, and contained some outdated or superseded regulatory language.¹⁰ These changes were shared with program management during the review. Program management agreed to make the necessary changes. The changes and recommendations provided to program management included both significant and minor observations. As discussed below, within a few weeks after the visit, NLSP submitted a new draft policy to LSC.

During the review it was determined that intake staff is familiar with the categories of assets that could be excluded by NLSP during financial eligibility screenings. However, certain assets listed as excludable in the NLSP financial eligibility guidelines (e.g., durable goods for elderly, household goods, etc.) are not enumerated in 45 CFR § 1611.3 (d)(1), which lists assets that can be excluded from consideration. Additionally, the NLSP asset guidelines that appear at the bottom of the ACMS eligibility screen do not correspond to the NLSP 2010 asset guidelines or 45 CFR § 1611.3 (d)(1).

NLSP must take corrective action to ensure that it has a fully updated, accurate and board approved income and assets policy that fully complies with the regulation. In particular this new policy must only allow exclusion of assets as permitted by the LSC regulation. Program management took quick action to update the policy. LSC/OCE offered assistance to NLSP in the development of a new policy, which has occurred since the visit. Soon after the visit, by email dated March 15, 2011, NLSP management provided a new policy draft. Subsequently, additional comments by LSC were provided and further improvements to the policy were made by NLSP. In discussions with program management during the comment period, NLSP stated that a new income and assets policy has been adopted.

The DR further directed that, when the new policy is finalized, NLSP must take corrective action to ensure that intake staff awareness is updated. The DR also directed that the ACMS eligibility

¹⁰ The old policy document provided included nine (9) pages that were unnumbered and an extract of pages 22-24 from the *Management Employees Manual, Revised March 2005*. The program was advised to take the following actions to clarify or change the policy so as to bring it into compliance with the current regulation: remove the various references to assets testing and retain the asset ceiling table found on page one of the document; clarify the policy on page two (2) to make clear that in domestic violence applications the assets determination does not include the assets of the alleged perpetrator of a domestic violence crime, but does include other household members; clarify that waiver of assets ceiling is a separate determination from the income waiver process for income over 200% of FPG (that relies on medical deductions) – assets and income waivers were linked in the old version, being in the same sentence on page two (2), and connected by an “and” thus making it appear that they were linked; remove general references to governmental programs for low-income individuals, and only use references to the exact programs as determined by the NLSP board that are adopted for streamlined intake; remove references to “available assets” (page 22) as this definition and consideration was from a prior LSC regulation and has been discontinued in use; remove references to “liquid” and “non-liquid” assets (pages 23 and 25); clarify language on page 23 regarding cited “b(1)” and “b(2)” factors, as these distinctions were discontinued in the current version of the regulation; and rework the “Exclusions” section on page 25 and remove items 3, 4, 7, and 8 as certain statements are incorrectly identified as exclusions. These include: personal and household effects, trusts from household funds for education and medical expenses, and cash value of IRA or Keogh Plans. Also, the old NLSP policy provided that assets excluded under Food Stamp, AFDC, and SSI programs are also excluded by NLSP. Instead the policy should simply state that pursuant to board adoption, people on (name of programs) do not need to be asset tested.

screens should be updated to match the necessary details of the new policy, and that intake staff will need to be trained regarding any differences in intake questions or approach that result from the new policy. Comments to the DR stated that the program will be taking all of these actions.

Finding 3: Sampled cases evidenced that NLSP maintains the income eligibility documentation required by 45 CFR § 1611 and CSR Handbook (2008 Ed.), § 5.3.

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.¹² *See* 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 (2008 Ed.), § 5.2.

In those instances in which the applicant’s household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (“FPG”) and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (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 (2008 Ed.), § 4.3.

All sampled cases contained the required documentation to comply with LSC’s income eligibility requirements. There were two exception cases discussed in the draft report – however, for both cases, NLSP was able to provide further documentation and explanation to demonstrate that both cases were LSC-eligible during any period in which the case was tracked as LSC, or charged to LSC funds. The first case, Open Case No. 96-11-004 mistakenly indicated a total monthly household income exceeding LSC income limits. With its comments to the DR, NLSP provided information that the client was LSC-eligible when accepted in 1996.

A second exception was fully explained and documented in subsequent conversations with the NLSP Executive Director during the comment period. This case was fully LSC eligible during 2009 when it was accepted and handled as an LSC case. Due to the program’s success in obtaining unemployment and disability coverage for the client, the client then became over-

¹² A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

income for future LSC services. When the client needed additional services in 2010, NLSP accepted the client in a new case, funded with public non-LSC funding. *See* Closed 2010 Case No. 09E-3009508 (LSC-eligible case) and Open Case No. 10E-3011954 (non-LSC case).

As part of ongoing case review, client eligibility information should be periodically checked to ensure that the file record fully documents the client as eligible. This should help avoid future files from having incomplete information, or mistakenly evidencing an ineligible client, such as the ones discussed above. For any case in which a client is not clearly LSC eligible, NLSP must ensure that non-LSC funds are used to fund the case and that the case is not reported in the CSR data.

Comments to the DR stated that NLSP agreed to take all of the actions stated in this finding.

Finding 4: NLSP maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) 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.¹³ *See* CSR Handbook (2008), § 5.4.

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

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

All sampled cases, but one (1), contained necessary evidence of asset screening, and demonstrated that the client(s) were LSC eligible, thus rendering the case LSC-reportable and able to be charged to LSC funds. The one (1) exception involved a Limited Action “B” case opened and closed in 2010 that listed client assets of \$600,000 with no explanation as to whether this amount included exempt assets or whether any waiver applied. *See* Closed 2010 Case No. 10E-4010753. The managing attorney noted that the case would be deselected from the CSR and

¹³ A numerical total value must be recorded, even if it is zero or below the recipient’s guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

as the case involved little time or costs, this corrective action is sufficient. Further, comments to the DR noted that at the time of LSC's review, NLSP had not completed its review of 2010 cases done before CSR reporting to LSC, and those cases like this one would be identified for deselection. In a subsequent conversation with the NLSP ED, it was confirmed that this case was deselected from LSC CSR reporting.

Finding 5: NLSP is in compliance with the prohibitions of 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, there were a few cases in which the necessary level of required documentation was not obtained prior to commencement of work on the case.

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 (2008 Ed.), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed.), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.¹⁴ Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

All sampled closed cases that had been reported to LSC in a CSR contained the necessary level of documentation to fully comply with Part 1626. All reviewed cases also indicated that the client was either a U.S. citizen or an eligible non-citizen at the time of case acceptance, including the three cases discussed below.

There were three (3) sampled cases in which a required citizenship attestation was not in the physical file reviewed. Two (2) of these cases were open, currently active, and indicated that in-person contact had occurred. *See* Open Case Nos. 10E-4010825 and 11E-1012424. In both, the files and the NLSP staff interviewed indicated program awareness of the need to obtain the

¹⁴ *See* Kennedy Amendment at 45 CFR § 1626.4.

attestation, and plans to do so. In Open Case No. 11E-1012424, the client was scheduled to come to the NLSP office on February 9, 2011 to, in part, execute the citizenship attestation. In conversations with program management during the comment period, it was noted that NLSP took corrective action regarding these files and that an attestation has been obtained in both cases.

In addition, there was a third file, a closed 2010 case that lacked a required attestation and evidenced unsuccessful program efforts to obtain the document. The case was also highly unique, in that was not ultimately handled by NLSP. The case began as a joint staff/pro bono case; however, the private attorney's law firm is now the sole counsel. NLSP has withdrawn its representation, the case is not a PAI case, and the file at NLSP is closed. As the case was coded for deselection it will not result in a reported compliance error. *See* Closed 2010 PAI Case No. 08E-1008483.¹⁶

A fourth case raised a consideration regarding the continued eligibility of eligible non-citizens. Closed 2010 Case No. 06E-3004747 was a custody case for an eligible non-citizen. However, the documentary evidence supporting the eligible alien status, obtained in 2006, indicated that the document was only valid until June 2007. The client had married a US citizen, and was proceeding through legalization. The case continued actively until 2008, was left open for possible continued work, and there was no evidence that the client became ineligible after June 2007. However, due to the expiration date on this immigration document, it is advisable that NLSP adopt a system whereby eligibility status can be updated, if needed.

Finally, there were two (2) sampled files with a signed but undated citizenship attestation, which is not a significant issue. *See* Closed 2009 Case Nos. 09E-4008604 and 09E-4009651. However, as discussed in 45 CFR § 1626.6(a), a recipient "shall require all *applicants* for legal assistance who claim to be citizens to attest in writing...that they are citizens..." Having an attestation dated helps a program demonstrate that the citizenship attestation was obtained either when the person was an applicant, or as soon as was reasonably possible.

In light of the above limited exceptions discussed, NLSP should remind program staff of the importance of obtaining a citizenship attestation during the application phase or at the first in-person client contact, and remind staff that these documents should be dated to fully assist demonstrating program compliance.

Comments to the DR stated that NLSP agreed with this finding and that the program will take all actions stated in the finding. Subsequent conversations with program management, during the comment period, indicated that NLSP has taken action under this CA and has frequently mentioned during staff meetings the importance of handling the citizenship attestation as mentioned above.

¹⁶ The time on this case appears to have been mainly expended by a pro bono attorney working at NLSP. However, some NLSP staff attorney time would have been expended prior to the external referral of the case. NLSP should take corrective action to allocate this staff time to a non-LSC funding source, due to the lack of proper screening documentation under Part 1626. In the comments to the DR, NLSP was requested to provide some additional information about this case, and cooperated with this request. Further, the program Executive Director, in a follow-up conversation stated that all NLSP staff time spent on this case was to be allocated to a non-LSC funding source, as requested by LSC.

Finding 6: Sampled cases evidenced that NLSP is in substantial compliance with the retainer agreement 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 lack of a retainer does not preclude CSR reporting eligibility.¹⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The few exceptions noted were minor and evidenced no pattern of non-compliance. Almost all cases that required a retainer agreement contained a compliant agreement. In a very few cases, the scope of representation could have been better detailed. These files arguably met minimum requirements of the regulation, but program staff agreed that more detail of scope is the better practice and the program's goal. Also, there was one (1) case that lacked any description of subject matter or case type regarding the representation. *See* Closed 2009 Case No. 09E-1008865, closed as an "F", Negotiated Settlement Without Litigation.

Case review also evidenced that program staff view the retainer as an important aspect of representation. Several sampled cases with expanding levels of service, or with multiple advocates (PAI and staff), contained several retainer agreements that were updated as needed.¹⁸

Comments to the DR stated that NLSP agrees with the finding, and that the program will ensure that all retainers include subject matter detail.

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

LSC regulations require that recipients identify by name each plaintiff it represents in any complaint it files, or in a separate notice provided to the defendant, and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations. In addition, the regulations require that recipients prepare a dated, written statement signed by each plaintiff it

¹⁷ 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.

¹⁸ *See e.g.* Closed 2010 PAI Case No. 08E-1008483 that had representation by both a staff attorney and pro bono counsel, and contained multiple retainer agreements. *See also*, Open Case No. 10E-4011551 that had three (3) retainers due to multiple aspects of evolving representation.

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).

The sampled files that required a statement under Part 1636 contained a document that met all regulatory requirements. The program's recordation of this information is standardized during intake, which has led to high compliance with the Part 1636 requirements.

Finding 8: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, additional training and direction for staff is needed to ensure consistent application of case acceptance priorities for advice and counsel or brief service cases.

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.

Sampled cases evidenced that NLSP is in substantial compliance with 45 CFR Part 1620. No sampled cases were outside of priorities as stated by the program's policy. However, there were some variations noted in the type of cases accepted by different staff for "A", Counsel and Advice or "B", Limited Action. Some staff read the NLSP priorities as requiring acceptance of any case type when only conducting an "A" or "B" level service. This has had the effect of some limited action cases that were outside staff areas of expertise, requiring additional work for some cases that were not within standard poverty law service areas.¹⁹ Program executive management stated that the priorities do not require acceptance of such cases and agreed to provide additional guidance and training to staff to clarify the types of cases that should be rejected or accepted for lower level services. NLSP should take corrective action to ensure that all staff involved in case acceptance understands the correct limitations and interpretations of the program's priorities.

Comments to the DR stated that NLSP agrees with this finding and indicated that the program will take necessary action. Comments also stated that NLSP was currently reviewing its Case Acceptance Guidelines in a process that is including all staff. Comments added that after a review by the NLSP Board no later than December 2011, staff training will be provided in this area.

¹⁹ These cases were often found in problem code "94" torts, and involved "A", Counsel and Advice or "B", Limited Action cases in which the client wanted brief direction about steps to take for such a claim. *See* Closed 2010 Case Nos. 10E-40107531 and 10E-1011852 and Open Case No. 09E-1009181. It was recommended to NLSP staff that Open Case No. 09E-1009181 be closed and deselected from CSR reporting.

Finally, there were a number of cases noted in both open and closed cases in which the client lived outside of Washington, D.C. Several of these files were tested and all sampled files were appropriate NLSP cases, with a legal issue or proceeding that was in the District of Columbia. *See e.g.* Closed 2010 Case No. 10E-4012277.

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

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

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

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

Sampled cases evidenced that NLSP is in substantial compliance with the requirements of CSR Handbook (2008 Ed.) § 5.6. There were only a few isolated cases identified that lacked clear evidence of legal advice. In the sample of closed and reported CSR cases, there was only one file identified (reported in 2009) that lacked adequate evidence of legal advice. The other cases currently lacking evidence of legal advice were all open and active in which the program will be documenting legal advice or services in the future, or that would be deselected should the case not proceed. One such open case sampled had been recently identified by program staff for closure and deselection. *See* Open Case No. 10E-4011998.

NLSP has multiple systems to ensure the documentation of legal advice. Once a staff attorney has ceased work on a client’s case, the case is closed using a File Closing Checklist that allows the staff attorney to identify the highest level of service provided to the client, as well as confirm the client’s eligibility. In certain instances, an attorney may send a closing letter to the client, which will also document the advice given. Finally a staff attorney may also complete a Closing Memorandum, which details the legal assistance provided to the client.

Finding 10: The program’s application of the CSR case closure categories under Chapters VIII and IX, CSR Handbook (2008 Ed.) were generally strong. There were a few exception patterns noted requiring correction. Also, NLSP was in substantial compliance with the use of problem codes.

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

Sampled files evidenced that NLSP has been generally successful in implementing the updated closing code definitions of the CSR Handbook (2008 Ed.), Chapters VIII and IX. Numerous “A” and “B” closure cases were tested and evidenced overall proper use of these two (2) closing categories. Case sampling also evidenced numerous proper uses of closing codes “F,” “G,” “H,” “Ib,” and “L,” as well as other isolated uses of other closing codes. However, use of closing code “K” closing code was inaccurate.

There were a few identified error patterns that will necessitate additional staff training and oversight of case closure, as follows:

- There were several cases reviewed that had been closed as “F,” but which would have more accurately closed at a higher level, either “G” or “Ib,” as program staff actually provided service as counsel of record.²⁰ Closing code “F” is not used when program staff members provide direct representation or are counsel of record;
- There were a few cases closed as “Ia” in which the case was contested, making “Ib” or “G” the more accurate closing code;²¹
- There were two (2) cases closed as “F” which lacked clear details regarding the negotiated settlement, as required by the CSR Handbook (2008 Ed.). *See* Closed 2009 Case No. 09E-1009537 and Closed 2010 Case No. 10E-4011519; and
- The review of sample cases with closing code “K” indicated that all “K” cases with legal advice should be closed with another closing code.²² In addition, there were two (2) cases closed with “K” that lacked any evidence of legal advice and should be deselected.²³

²⁰ Case review evidenced the following: Closed 2009 Case Nos. 08E-4008363 (closed as “F” which would be more accurate as an “Ib” as a program represented the client in a contested custody court case, with a substantive court decision and an interim custody order signed by the program attorney; and 09E-1008865 (closed as “F” which would be more accurate as a “G” as case notes indicated that a program attorney represented the client in a landlord-tenant eviction case and negotiated a settlement that was then filed in the court action). Similar to this last case there were several other files that used “F” in which “G” was more accurate. *See* Closed 2009 Case Nos. 08E-1007260 and 09E-1008658 and Closed 2010 Case No. 09E-1010285.

²¹ *See* Closed 2010 Case No. 10E-3010756 closed as an “Ia”, however, as the file indicated a stipulated agreement, either “G” or “Ib” would be more accurate. *See also* Closed 2010 Case No. 08E-1006937. As these 2010 files had not yet been reported to LSC, program staff made the closing code change during the review.

²² For example, one case closed as “K” should have used “B”. *See* Closed 2010 Case No. 09E-4010255. Another case closed as “K” should have used “Ib”. *See* Closed 2010 Case No. 07E-4006443. As these files and a few other “K” cases tested, were closed in 2010, and not yet reported to LSC, program staff made the closing code change during the review and before reporting the 2010 CSR.

²³ The first case, Closed 2010 Case No. 09E-4010255 lacked evidence of legal advice or services provided, and will be deselected. The second case was reported in 2009. *See* Closed 2009 PAI Case No. 08E-1008447.

There were other isolated exception cases that did not indicate any pattern. Only one (1) of these is significant to mention. In Closed 2009 Case No. 09E-1009218 the closing code “Ib” was selected, however the client disappeared before the court representation and the program withdrew from the case. This fact pattern exactly fits closing code “L.” Code “Ib” is reserved for cases in which there has been actual court representation in a contested case.

Problem Codes

NLSP provides a wide range of legal service case types, and numerous problem codes were tested throughout both the random and targeted case sampling. Problem code usage was overall accurate with some exception cases. The exception cases were few and not significant. There was one simple observation regarding the exception cases – all cases with incorrect problem codes were found in the group of problem codes from 90 to 99.²⁴ It should be noted that not all cases in this grouping were incorrect, however. *See* Closed 2010 Case No.10E-4010719 that correctly used problem code “99.” Overall, NLSP was in substantial compliance with the use of problem codes set forth in the CSR Handbook (2008 Ed.).

Comments to the DR stated that NLSP agrees with the findings of this section, and noted that the program will take all actions set forth by LSC. In subsequent conversations with program management, during the comment period, it was noted that NLSP has conducted periodic staff training that includes the above-mentioned rules to ensure that staff understand and utilize them correctly.

Finding 11: Sampled cases evidenced substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 (Timely Closing of Cases).

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 or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed.), § 3.3(a).²⁵ There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories F through L,

²⁴ These cases include: a set of two (2) distinct cases for the same client both indicated as “97” when the correct codes should have been “36” and “37” (Closed 2010 Case Nos. 10E-4010886 and 10E-4010887); a case indicated as “96” that should have been “95” (Closed 2009 Case No. 09E-1008706); a case indicated as “95” that should have been “96” (Closed 2009 Case No. 09E-1008708); a case indicated as “99” that should have been “95” (Closed 2009 Case No. 09E-3009467); and a case indicated as “99” that reflected the case involved public benefits (Closed 2010 Case No. 10E-4011841). Three (3) of the six (6) above noted files were closed in 2010 and were not yet reported to LSC, allowing program staff to make a problem code change prior to CSR reporting.

²⁵ 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).

2008 CSR Handbook) should be reported as having been closed in the grant 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). 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).

NLSP is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3(a). Several older open cases were selected in the advance case samples to test for potential dormancy and timely closing issues. Testing of these cases showed a clear system in place to evidence continued staff work for older open cases. Also, PAI cases evidenced periodic updating that demonstrated the cases were active. In general, there were few cases that raised any issues with this requirement, and these exceptions did not indicate any pattern of error or misunderstanding. There was only one (1) untimely closed case identified that had been reported to LSC (in 2009). *See* Closed 2009 Case No. 08E-4006928. There were few open cases identified which appeared potentially dormant and, in each incidence, program staff had, prior to the review, identified the cases for closing and deselection from CSR reporting. *See* Open Case Nos. 96-11-004 and 09E-1008636.

PAI Cases

PAI cases were specifically tested for required follow-up activities and timeliness/dormancy issues. Closed PAI cases sampled were all closed in a timely manner under CSR Handbook rules. Open PAI cases sampled also evidenced follow-up activities to ensure the case is active. In particular, some older open PAI cases were targeted for review. This review indicated that sufficient follow-up activities were conducted on older cases and particularly since the new Pro Bono Counsel (“PBC”) was hired in mid-2010. When NLSP is fully successful in obtaining private attorney cooperation, cases contained significant detail regarding case status, such as next major date of activity, anticipated level of service, and notes of actions done, among other information. *See* Open PAI Case No. 08E-1006750. When the private attorney did not respond to contacts, case files contain records of attempted calls, letters or emails, and other external contacts such as to a government agency, or to the client to determine case status. *See* Open Case No. 07E-4006108.

Comments to the DR stated that NLSP agreed with this finding, and that actions will be taken in response to LSC’s observations.

Finding 12: Extensive testing of potentially duplicate cases evidenced substantial compliance with CSR Handbook (2008 Ed.), § 3.2. NLSP both avoids duplicate case reporting as well as correctly reports multiple unique cases when required by the CSR Handbook. However, further training of staff regarding one duplicate rule regarding certain related “A” level cases, is needed.

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 (2008 Ed.), § 3.2.

When a recipient provides more than one (1) 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 (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 (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 (2008 Ed.), § 6.4.

Sets of multiple cases for the same client were tested and evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. NLSP correctly avoids duplicate reporting, as well as ensures reporting of more than one case where required.²⁶

One set of potential duplicates reviewed, Closed 2010 Case Nos. 10E-4010886 and 10E-4010887, both closed at the service level “A” involved related problem codes (36 & 37), which is often only reportable as one (1) case. However, in these cases, there were two (2) underlying court actions for which the program gave two (2) different sets of advice, and for this reason the double “A” closures were not duplicates. However, discussion of this case indicated that some staff members were not fully clear regarding the level “A”, Counsel and Advice, duplicate rules. In response, additional sets of potential duplicates closed for 2010 were identified for an abbreviated review involving only potential duplicate issues.²⁷ This testing, again, confirmed that NLSP staff, overall, is aware of duplicate case rules, and apply those rules, with the sole exception of the “A” related rule. Some staff members need clarification regarding how to avoid duplicate reporting when certain multiple services are provided at the “A” level, around the same time, and for closely related problem codes.

For purposes of ensuring clarity and consistency for NLSP staff, it was requested that NLSP provide further guidance to staff regarding the following rule: if “A” level Counsel and Advice is

²⁶ For example, Closed 2009 Case Nos. 09E-1008826 and 09E-1009761 were correctly reported as two (2) cases, the first being closed properly as “Ib” and the second case, an appeal to the DC Court of Appeals, as “Ic”.

²⁷ This 2010 sample was conducted for two (2) purposes: first to test the application of the rule; and, second, to assist NLSP in avoiding possible duplicate “A” errors in its 2010 CSR which was to be reported to LSC soon after the visit.

provided contemporaneously or within a brief time frame for several different problem codes, and if all the problem codes are within the same “group of 10” (such as a 31, 32, and 37) then only one case should be reported. In contrast, if the problem codes are in separate groups, such as a 37 and a 64, then two (2) “A” cases should be reported. Also, the rule applies to solely to “A” level cases. *See* CSR Handbook (2008 Ed.).

It should be noted that there were no closed *and reported* sets of two (2) “A” cases that were identified during the review, indicating that prior duplicate “A” sets may have been corrected by management prior to submission to LSC. As such, the few potential exceptions noted do not affect an overall finding of substantial compliance in this area. Also, as 2010 closed cases were not yet reported to LSC, program staff members agreed to take corrective action prior to the reporting of 2010 final case totals to confirm and then remove any possible duplicates identified.²⁸

Comments to the DR stated that NLSP agrees with this finding and that the program will be taking all actions set forth by LSC in this area.

Finding 13: Review of outside practice activities and related program practices evidenced compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

This part is intended to provide guidance to recipients in adopting written policies relating to the outside practice of law by recipients’ full-time attorneys. Under the standards set forth in 45 CFR Part 1604, recipients are authorized, but not required, to permit attorneys, to the extent that such activities do not hinder fulfillment of their overriding responsibility to serve those eligible for assistance under the Act, to engage in pro bono legal assistance and comply with the reasonable demands made upon them as members of the Bar and as officers of the Court.

Compliance with outside practice requirements was a detailed focus of this review. All program attorneys present in all offices visited were questioned regarding their awareness of any outside practice of any office attorney. Further, the individuals who had conducted approved outside practice as reported to LSC were interviewed about the work conducted. The above interviews evidenced no additional incidents of outside practice other than those approved and disclosed by program management. Further, all outside work conducted fit an exception of the regulation and were appropriately approved by the program in advance. NLSP is in compliance with the requirements of 45 CFR Part 1604.

It is noted that an activity that was tracked by NLSP, as outside practice – teaching a legal class, is not an activity covered by Part 1604. This activity does not involve the actual practice of law covered by the regulation, and is a permissible activity that does not need to be tracked by NLSP as outside practice.

²⁸ There were five (5) pending sets of cases marked as “A” in which one (1) case should be reported. In addition there was a sixth set identified in which program staff needed to do further inquiries to determine whether two (2) separate cases were present.

Finding 14: Sampled cases, sampled financial records and interviews with staff evidenced compliance with 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.

Review of case lists as part of case sampling, review of sampled cases, and interview of staff in all three offices visited indicated no prohibited political activities that would violate Part 1608. Also, a limited review of the cash disbursement journal and supporting documentation for the period of January 1, 2008 through December 31, 2010 and interview of the contract accountant evidenced no expenditure of grant funds, or use of personnel or equipment for prohibited political activities as prohibited by 45 CFR §§ 1608.3(b) and 1608.4(b).

Finding 15: Sampled cases and interviews with staff 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 (2) private attorneys; neither the referral service nor two (2) private attorneys will consider the case without payment of a consultation fee; the client is seeking, Social Security, or Supplemental Security Income benefits; the recipient, after consultation with the private bar, has determined that the type of case is one that private attorneys in the area ordinarily do not accept, or do not accept without pre-payment of a fee; the Executive Director has determined that referral is not possible either because documented attempts to refer similar cases in the past have been futile, emergency circumstances compel immediate action, or recovery of damages is not the principal object of the client's case and substantial attorneys' fees are not likely. *See* 45 CFR §§ 1609.3(a) and 1609.3(b).

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

Sampled cases indicated no actions or cases that raised issues with Part 1609.

Finding 16: During 2010, NLSP took significant steps towards improvement of its PAI program organization and PAI compliance systems, including related documentation, policies, procedures and practices. NLSP is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases. However, NLSP must adopt a new indirect cost allocation method for PAI.

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.

Additionally, 45 CFR Part 1614 requires that recipients utilize a financial management system and procedures that document its PAI cost allocations, identify and account for separately direct and indirect costs related to its PAI effort, and report separately the entire allocation of revenue and expenses relating to the PAI effort in its year-end audit.

The NLSP PAI program consists, in large part, of a special arrangement with Covington & Burling ("CB"), a local law firm with a long commitment to pro bono representation. The law firm donates two attorneys, one paralegal, and a secretary to NLSP for six-month rotations, two (2) times a year.²⁹ Cases handled by CB attorneys are tracked and closed as pro bono cases. In addition to these in-house CB pro bono attorneys, there are also a small number of pro bono cases placed with other external private attorneys. Also, a number of city groups such as other service organizations, area law schools, and bar associations participate with NLSP to produce various community education or legal information clinics.

Comments to the DR noted that NLSP has had a full time PBC since October 2007. Since the arrival of the current PBC, in mid-2010, NLSP has worked to reactivate, reorganize, and/or improve the Pro Bono program. Although there were some written PAI policies when she started, the current PBC created a new written set of policies regarding the various PAI program

²⁹ Comments to the DR stated that while this statement of six-month rotations is correct, that recently the attorneys may stay for seven (7) and the paralegal may stay for up to one (1) year. Comments added that the secretary, until recently, was with the program for over eight (8) years.

activities. Also, as discussed in program comments to the DR, the then-existing infrastructure of attorneys who participate in the various PAI efforts was inefficient, and new systems were warranted, which led to changes being made by the new PBC. The PBC stated that within three (3) months of her arrival that she had written a draft set of policies. As part of this policy development, she also adopted a program evaluation methodology so as to assess each PAI clinic or other effort conducted and to identify what programs are effective. For overall planning, the new PBC also created a Pro Bono Calendar of key activities including Pro Bono Advisory Board meetings. A several inch binder of the policies, forms, and records created by the PBC was accessed during the review, and sample copies of forms and event assessments were obtained. These materials evidenced that NLSP currently has detailed, written PAI policies that are being followed in practice.

The PBC is also continuing some other basic organizational work. The PBC stated that she was also working on a redevelopment of a more specific/effective annual PAI plan. She noted that prior NLSP PAI plans had no numbers for outcomes and lacked specifics for accountability. She stated that the new plan's model is to include more measured outcomes and to make the plan more directly financially accountable.³⁰ Consistent with the goal of increased accountability, the PBC has implemented a post-event assessment system for clinics or other client informational PAI events.³¹ The PBC also created and implemented a form/procedure for use in advance of any event, setting forth the proposal including content, format, location, budget, and other related factual information to be considered. She stated that, at present, there are two (2) NLSP board members who serve as the board's liaisons for the NLSP PAI effort. In addition, the PBC position is required to coordinate with the NLSP Director of Legal Programs and noted that coordination is ongoing.

Minimized intake screening was tried recently for one PAI community event. The PBC provided an example of an event intake sheet described as "streamlined intake" that was tried for a September 2010 event of a tenant association summit. As the event provided no legal advice or individual legal services, the intake form is used to only generally sense the eligibility of the audience. However, the form and method would be inadequate if used for the provision of legal advice or services.³²

The "external" placement of pro bono cases to non-CB attorneys has been successfully placing some clients with private attorneys. However, there are not a substantial number of such cases at a given time, with approximately 10 such PAI files open at the time of the February 2011

³⁰ The new PBC also discussed other visionary concepts for the NLSP PAI effort. For example, she discussed the need for NLSP to work on creating a "visual presence" in the Washington, D.C. pro bono marketplace, noting that NLSP should have some type of PAI logo or other identifiable visual materials to help brand the program's pro bono and other PAI efforts.

³¹ A sample of a completed "Community Event Report" for a January 2011 lecture on civil legal resources for seniors was obtained and includes precise detail such as number of persons present, requests for further assistance generated, and legal issues identified. The report also contained copies of the materials used at the event, and other evidentiary data about the event. The form also requires a recommendation as to whether the event should be repeated by NLSP and allows for additional recordation of data or idea for improvement.

³² For example, no direction is provided regarding what assets should be considered and only has lines for "asset type" and "amount of asset". Further, the form does not provide a line for a citizenship attestation which would be required as the intake is in person.

review.³³ All surrounding documentation regarding placement, notice, communications and agreements have been redone by the PBC and were demonstrated as in use. These documents include standard thank you letters, a Pro Bono Counsel Agreement, an agreement for use of Westlaw, and a release authorization form.

Proper Case Designation as PAI or Staff

There were two (2) open cases reviewed that were identified in the ACMS as staff cases but that both indicated the involvement of a private attorney. *See* Open Case Nos. 10E-1012223³⁴ and 10E-4011551. Also, a third open case was listed as a staff case, but was actually assisted by a pro bono attorney. *See* Open Case No. 10E-4011475. After identification of these cases to NLSP staff, it was determined that NLSP will take additional actions to ensure that all PAI cases are coded to the PBC's staff number. In this manner, the PBC can easily track all open PAI cases.

In follow-up contacts with staff after the visit, it was confirmed that the open cases discussed here have been re-coded to the PAI staff member's number.

Finally, there was one (1) case being tracked as PAI that had the involvement of a "JD", who had their law degree but who was not a member of the bar. The person was handling a case as a "paralegal." *See* Open Case No. 07E-4006108. As the individual is unlicensed and the case is being supervised by a staff attorney, this case should be reported as a staff case when completed, as it was a staff attorney who was the licensed attorney overseeing the case.

Financial Compliance

The Audited Financial Statements for Fiscal Year ("FY") 2008 and FY 2009 showed that in 2008 NLSP expended \$162,024 or 16.51% of their Basic Field support on PAI activities compared with \$174,056 or 16.12% in 2009. CB directly pays the salaries and benefits for its donated staff, and these costs are not NLSP PAI costs. However, NLSP pays for the on-site work expenses for these staff, such as telephone, litigation costs, and supplies, and it is these costs that NLSP counts towards PAI, as they do with other fractional, pro-rated shares of IT support, janitorial services, electricity, and Internet service.

The indirect allocation process used by NLSP involves an overly-complicated matrix of four (4) different, but interrelated, worksheets. The worksheets contain attorneys, administrative staff, the four (4) CB employees, and Westwood fellows³⁵ – by month and office locations. The process is needlessly complicated and questionable. For example, there are calculated charges for a

³³ The PBC stated that there are approximately 29 other legal services providers in Washington, D.C. and that the competition for pro bono resources and funding is very high. The OCE team leader explained to the PBC that in the recent past LSC had required NLSP to increase the number of these external pro bono placements, and that there was a letter to this effect sent several years ago. The PBC stated that she was unaware of this prior letter or directive.

³⁴ In this first case, the file did indicate some private attorney engagement of the case, but the file did not yet contain any evidence of the legal advice or assistance provided by the private law firm, and would need this evidence prior to reporting as a closed PAI case in the CSR.

³⁵ Westwood is a fellowship program funded by Covington & Burling that provides recent law school graduates to serve as employees of NLSP. As discussed *infra*, this effort does not qualify as PAI eligible time.

fractional share of bank charges and payroll fees. This process is also inefficient, as the numerous calculations must be done by a contract accountant which takes time, and, therefore, directly costs NLSP for the involved contractual time.

As a result of the above, NLSP was directed to take corrective action regarding indirect allocations for PAI by ceasing the current indirect cost methodology, and to adopt one (1) of the common and recommended LSC overhead allocation methods. These recommended methods were discussed and explained during the review. With its comments to the draft report, NLSP was asked to report what indirect methodology it has adopted for use effective January 1, 2011. With its comments to the DR, NLSP provided a draft of its proposed new allocation method and requested OCE assistance in reviewing the draft and providing additional technical assistance to ensure the method adopted will be accurate. In a follow-up telephone call, OCE has provided the assistance required. Comments also stated that NLSP will use the new allocation retroactive to January 1, 2011 as required.

NLSP has been automatically allocating 100% of the salary of the PBC towards PAI. This should not be done, as this individual is an attorney and could have some non-PAI duties at times that would need to be charged to a non-PAI cost center. For example, this individual, who has only worked at NLSP since July 2010, stated they occasionally would provide a client with direct legal advice with no PAI referral or placement. Such cases must be closed as a staff case and must have some time charged to a staff (non-PAI) cost center.³⁶

Also, there is an ongoing assignment of the PBC that does not qualify as PAI. The Westwood fellowship program involves recent law graduates, provided by Covington & Burling, who work at NLSP as staff, and this program is not considered to be PAI allocable. The PBC is involved in the marketing and general administration of this program. She is not involved in the day-to-day use of the Westwood fellows at NLSP. The PBC's efforts on the Westwood program must be covered by time records and charged to a non-PAI cost center.

NLSP must take corrective action to have the PBC clearly account in her time records, all time expended on non-PAI activities, and must allocate these activities to a non-PAI cost center. Comments to the DR stated that NLSP would ensure that only proper PAI activities will be funded as PAI and that NLSP will ensure that the PBC clearly accounts all non-PAI activities to a non-PAI cost center.

³⁶ Comments to the DR stated that there should not be cases with direct legal advice by the PBC, noting that cases are referred to the PBC after the case has been assessed. Comments added however, that should a case be provided advice by the PBC, in which there was no private attorney involvement, NLSP will follow the direction found in this report and will code the case as a staff case, and will charge it to a non-PAI cost center. LSC notes that there is no issue with having a attorney pro bono coordinator close some cases directly at a limited service level. LSC further notes that such practice is not uncommon for cases in which no PAI referral was successful. This has an advantage of providing the client with some legal guidance where the alternative would be that they receive no advice. The only necessity to ensure compliance is that such cases are tracked and reported as staff cases, and related time be identified and charged as non-PAI

Finding 17: NLSP is in compliance with 45 CFR § 1627.4(a) that prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities.³⁸ Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states 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.

Targeted testing of accounting records and the detailed general ledger evidenced compliance with 45 CFR § 1627.4(a). Non-mandatory dues were paid with non-LSC funds.

Finding 18: Sampled program financial and case records indicated substantial compliance with the requirements of 45 CFR Part 1635 – Timekeeping.

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

³⁸ Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

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.

Timekeeping and compliance with Part 1635 has been, for NLSP, the subject of prior corrective action and special reporting requirements by LSC. The sampling conducted during the February 2011 review evidenced that NLSP has taken prior corrective action and has appropriate timekeeping systems in place. Fiscal review of sampled advocate timekeeping records for the period January 10 through February 5, 2011 evidenced compliance with 45 CFR Section 1635.3(b)(c). Tested records were electronically recorded, and contemporaneously kept, recording the time spent on each case, matter or supporting activity. A second test of sampled advocate timekeeping records for each of the years 2008, 2009, and 2010, also evidenced compliance with 45 CFR Section 1635.3(b)(c).

The review also conducted a comparison analysis of several case files against corresponding timekeeping records for the case, to determine whether there were corresponding, reasonable and contemporaneous time entries for all activities indicated. Review of the actual time amounts entered for sampled activities indicated that time charges tested were reasonable. Time charges related to the dates and amounts of work performed as evidenced by the case file. There was one (1) minor exception. Open Case No. 10E-1012193 indicated a very brief action taken by the advocate on January 7, 2011 but there was no corresponding time charge entered for that date. As the case was open and active, program staff stated that a time charge for that date will be entered.

Finding 19: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees) during its effective period.

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.³⁹ However, with the enactment of LSC's FY 2010 consolidated

³⁹ The regulation defined "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).

appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010 meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010 recipients may claim, collect and retain attorneys' fees for work performed, regardless of when such work was performed.

LSC further determined that it would not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period December 16, 2009 and March 15, 2010. Claims for, collection of, or retention of attorneys' fees prior to December 16, 2009 may, however, result in enforcement action. As well, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement remain in force and violation of these requirements, regardless of when they occur, may subject the recipient to compliance and enforcement action. *See* LSC Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010).

Review of sampled cases and interviews of staff in all program offices indicated no cases or issues raising compliance concerns with Part 1642 during its operative period.

Finding 20: Sampled cases reviewed and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

The purpose of 45 CFR Part 1612 is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

Interviews of staff in all program offices and review of sampled cases evidenced no lobbying or other prohibited activities under Part 1612.

Finding 21: Sampled cases and interviews with staff evidenced NLSP's 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.

There was no evidence that NLSP has handled any criminal law activities as proscribed by Parts 1613 and 1615. None of the sampled files reviewed involved legal assistance with respect to a

criminal proceeding, or a collateral attack in a criminal conviction. Also, interviews of staff from all offices indicated no program activities or cases involving the prohibited activities of Parts 1613 and 1615.

Finding 22: Sampled cases and interviews with staff 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).⁴⁰

Review of sampled program cases and interviews of staff from all program offices evidenced that there were no activities to initiate or participate in a class action by NLSF or its staff.

Finding 23: Sampled cases and interviews with staff 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.

Sampled cases involved no activities involving redistricting. Further, staff interviewed from all program offices indicated that there were no activities or cases prohibited by Part 1632 undertaken.

Finding 24: Sampled cases and interviews with staff 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.

⁴⁰ 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).

Review of case lists, discussion with program staff from all offices, and review of sampled cases evidenced compliance with Part 1633; there was no incidence of activities involving eviction representation for anyone involved with drug trafficking.

Finding 25: Sampled cases and interviews with staff 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.

Sampled cases evidenced no activities that involved activities prohibited by Part 1637. Further, interviews of staff in all offices evidenced no staff awareness of any cases that involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person.

Finding 26: Sampled cases and interviews with staff 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.⁴¹ This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

No sampled cases contained any activities that raised concerns with the prohibitions contained in Part 1638. Further, staff interviewed in all offices indicated no awareness of any client solicitation by any NLSP staff.

Finding 27: Sampled cases and interviews with staff 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.

⁴¹ *See* Section 504(a)(18).

No sampled cases indicated any issues involving Part 1643 restrictions. Further staff interviewed in all offices visited indicated no awareness of any program activities involving the subjects of Part 1643.

Finding 28: Sampled cases and interviews with staff evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

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

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

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

No sampled cases raised any compliance issues with the above legislative restrictions. Further, staff interviewed in all offices indicated no awareness of any program activities involving the above-restricted areas.

Finding 29: NLSP has not been providing the required notice to private donors required by 45 CFR Part 1610.5(a).

According to 45 CFR Section 1610.5(a), no recipient “may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.”

All private contributions of \$250 or higher for 2008, 2009, and 2010 were requested and reviewed and a sample of 16 acknowledgement letters sent by NLSP to these donors was tested.

This review evidenced that these letters do not include dedicated language regarding the prohibitions and conditions that apply to the funds as required by 45 CFR § 1610.5(a). Sample language used to comply with this regulatory section was provided to the program, and program management agreed to take corrective action to ensure that future letters comply with this notice requirement. Subsequent to the review, and during the comment period, NLSP provided a copy of a letter demonstrating the program's current compliance with the notice requirements of Part 1610.5(a).

Finding 30: A limited review of NLSP internal control policies and procedures demonstrated that the program's policies and procedures generally compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed). However, weakness in one (1) area was identified.

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

An LSC recipient, under the direction of its board of directors, is required to establish and maintain adequate accounting records and internal control procedures. Internal control is defined as a process put in place, managed and maintained by the recipient's board of directors and management which is designed to provide reasonable assurance of achieving the following objectives: (1) safeguarding of assets against unauthorized use or disposition; (2) reliability of financial information and reporting; and (3) compliance with regulations and laws that have a direct and material effect on the program. *See* Chapter 3 of the Accounting Guide for LSC Recipients (2010 Ed).

NLSP has outsourced its entire accounting function to an outside accounting firm, Lucas, Tucker, P.C., who has assigned a contract accountant to work at NLSP offices. The LSC internal control worksheet was completed by the contract accountant who is experienced and fully familiar with NLSP's financial practices.

This assessment identified questions regarding internal controls over check disbursements. Comments to the DR described the current NLSP division of responsibilities regarding check disbursements as follows: (1) invoices are brought to the Executive Director; (2) The Executive Director gives the invoices to the contract accountant; (3) the contract accountant reviews the invoice for accuracy, reviews to make sure that it has not already been paid, assigns cost allocations and prepares the checks; and (4) the Executive Director reviews the cost allocation and signs the check. For checks over \$10,000, NLSP requires two signatures; the Executive Director will obtain the second signature, which is either the Director of Legal Programs or one

of three designated board members. The system as described is adequate and there is no further concern regarding the internal controls cash disbursement procedures. Regarding manual checks needed for emergency situations, NLSP also described an adequate set of protocols.⁴²

NLSP should consider changing its policy regarding when a second signature for checks is required. Currently, NLSP requires a second signature for checks over \$10,000. NLSP should consider dropping this amount to a lower figure, such as \$2,000.

One area with clear internal control weaknesses was identified. Specifically, one employee performs too many functions under procurements. The individual conducts all of the following: compares purchase order to vendor invoice; verifies the accuracy of the vendors invoice; and maintains control of unpaid vendor invoices.⁴³ NLSP must segregate the duties/functions that are related to ordering and maintaining supplies, by having each of the following done by a different individual:

1. initiating order forms for new supplies;
2. receiving the supplies and comparing the invoice to the order form; and
3. checking to ensure that the actual delivery matches the materials ordered.

In subsequent conversations with program management during the comment period, NLSP agreed to take action to separate these three tasks.

Also, comments to the DR noted that the accountant maintains control of unpaid vendor invoices.

Finding 31: A review of several outstanding LSC Technology Innovation Grant (“TIG”) balances evidenced that NLSP fiscal records show an unexpended TIG grant fund balance since 2007 of at least \$16,479.

In the past several years, NLSP has received three (3) TIG grants from LSC. The audited financial statements for NLSP for the years 2007, 2008, and 2009 show the following amounts in unexpended TIG funds on the statement of support, revenue and expenses and changes in net assets: \$11,479, \$6,479, and \$6,479 respectively. However, the 2008 and 2009 amounts are incorrect. During the on-site visit, available NLSP records did not provide sufficient clarity

⁴² In follow-up conversations with program management during the comment period, the Executive Director described process regarding (the few) manual checks as follows: (1) the ED will request a program attorney to prepare the check based on the identified need for payment; (2) the ED will sign the check and the whole check will be copied; and (3) the check copy along with the original supporting documentation are given to the accountant. The accountant will later put the check into the automated system as with any other expenditure. As with any check, amounts over \$10,000 require, and will get, two signatures. It was noted that manual checks are done only in emergencies, usually involving immediate litigation expenses, such as costs for a transcript.

⁴³ Comments to the DR, and follow-up conversations with the NLSP Executive Director, confirmed the procurement practices as follows: (1) order forms for new supplies are first brought to the ED; (2) the ED initials approval of the expenditure; (3) a dedicated secretary then places the order electronically; (4) when the order arrives the same secretary will compare the invoice to the order form to ensure that all items are present and will then initial the invoice; and (5) the invoice is then provided to the accountant to enter the information into the accounts payable process. As described in this section, these functions must be further divided to include additional staff.

regarding a \$5,000 line item TIG expense for equipment rental, as reported in the 2008 audit. In follow-up communications after the review, NLSP program management determined that NLSP auditors had misclassified the \$5,000 as an expense, but that the amount was actually income. As such, the 2008 and 2009 audits understated the TIG fund balance. Further, there was no accrued interest added for several years. The current unexpended TIG grant fund balance is at least \$16,479. To reach a final fund balance figure, accrued interest must be added.

The program has a dedicated TIG file maintained by NLSP's Executive Director to demonstrate and document certain activities and costs. During the on-site review, program management discussed how NLSP incurred several significant expenses, including third party payments, on the third, and most recent, TIG grant in excess of the actual grant funds received to date from LSC.

Subsequent to the February 2011 visit, OCE conducted further review of this fund balance issue to determine an appropriate resolution. Resolution of this fund balance issue will be done by LSC through separate communication.

Finding 32: Bank reconciliations are being performed monthly and timely. NLSP pays a monthly fee on one of its operating accounts, which is unnecessary.

NLSP maintains a total of seven (7) bank accounts: two (2) operating accounts, one (1) payroll account, three (3) restricted funds accounts, and one (1) sweep/investment account. Twelve (12) bank reconciliations for two (2) operating, one (1) payroll, and one (1) sweep/investment account for October, November, and December 2010 were sampled. The review disclosed that the reconciliations are being performed monthly and timely.

During the review of bank reconciliations it was learned that an operating account with PNC charges a monthly Corporate Account Analysis Charge that averages \$150 per month. A second operating account charges no fee at all. The contract accountant stated that the first PNC operating account is tied to an interest generating PNC sweep/investment account that averages \$4 to \$8 per month in interest payments. The Corporate Account Analysis Charge should be viewed in the context of 45 CFR Section 1630.3(b)1 which requires that a "...cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract." Since NLSP also has a non-fee-charging operating account, the annual \$1800 charge is not an appropriate use of LSC funds. NLSP must cease using any LSC funding for these charges. It is also recommended that NLSP close the fee-charging account.

Comments to the DR noted that previously this account paid interest that was substantially more than the fees charged resulting in no net cost. As of the submission of comments, NLSP had closed this account. Comments added that although NLSP experienced delays by the bank in closing this account, all fees charged since May 2011 were reimbursed by the bank.

Finding 33: The NLSP Accounting Manual needs to be updated and revised.

The NLSP Accounting Procedures Manual (“APM”) was last updated in mid-2008. In August 2010, LSC revised its *LSC Accounting Guide for Recipients*. NLSP must align its internal accounting manual with the updated LSC guide. As part of this, the NLSP APM documents the current indirect cost methodology used for PAI expenditures and this also must be changed, as discussed *supra*.

Comments to the DR stated that the program agreed with this finding and noted that NLSP has been working on a new APM. Further communications with NLSP during the comment period indicated that the APM was in draft form in January 2012 and was to be presented to the Board Finance Committee at its next meeting. In January 2012, OCE obtained a copy of the draft APM and will be reviewing it to ensure that all necessary updates, and issues identified by LSC, have been appropriately clarified or included in the new version.

IV. RECOMMENDATIONS⁴⁴

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

1. Adopt a more ongoing review system to ensure the following two (2) case coding practices:
 - Open cases transferred between offices (usually due to a move of a casehandler) should be re-coded within the ACMS to reflect that the file is being handled and/or located at the new office location; and

In a conversation with NLSP management in December 2011, it was noted that the program adopted this recommendation immediately after the OCE review.

- Ensure that all staff members are aware of the need to code any open non-CB pro bono case to the PBC's staff number so that this staff person can properly track all open PAI cases outside of the program. Also, for any case in which the pro bono individual is not a licensed attorney, such as a "JD", the case should not be reported as a PAI case.

In a conversation with NLSP management in December 2011, it was noted that NLSP adopted this recommendation.

2. Decide on one (1) method for recording considered over-income factors for applicants whose income is between 125% and 200% of FPG, and then instruct all intake staff as to the correct method for recording these factors;

In a conversation with NLSP management in December 2011, it was noted that NLSP now has one method for considering applicants between 125-200% of FPG.

3. Provide training and/or periodic reminders to advocate staff that the eligibility of the client (as documented in the file), should be briefly reviewed by advocates to ensure that the file evidences a client as eligible. This viewing of the information is best done prior to conducting extensive casework. Where the files do not evidence clear income or assets eligibility, additional evidence should be obtained, the file closed, or paid by another fund source allowing over-income or over-assets clients; and
4. Adopt a clear rule and practice to ensure that staff members do not co-sign client retainers until after a case has received full approval and full acceptance. Such a practice

⁴⁴ 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.

will prevent a case having a fully executed retainer when it was not ultimately accepted for extended services.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Improve its group eligibility screening and documentation practices to include information showing that the group does not have private counsel and does not have the means to obtain private counsel, as required by 45 CFR § 1611.6 (a);

Subsequent conversations with program management indicated that this CA has been fully implemented.

2. Once a fully updated and board adopted intake and assets policy is in place, take action to update the ACMS eligibility screens to match the necessary details of the new policy; and also conduct simple training of intake staff to ensure any changes in approach that result from the new policy are implemented in practice. Also, NLSP should add a written question in the ACMS regarding reasonable income prospects so that the documented process reflects staff practices;

Comments to the DR stated that NLSP would be taking all required actions discussed in this CA. Further, subsequent conversations with program management indicated that a new policy has been adopted by the NLSP board.

3. With its comments to the DR, NLSP was asked to provide additional data for the following three (3) cases: Open Case No. 96-11-004, Closed 2010 Case No. 09E-3009508, and PAI Case No. 08E-1008483.

Comments to the DR, and discussions with management during the comment period, provided additional evidence that demonstrated that the first two cases above were LSC-eligible during the time in which LSC funds were used for the cases. The information provided indicated that the third case needed to be allocated to non-LSC funding. In Case No. 08E-1008483, NLSP will be allocating any staff time on the case to non-LSC funds.

4. Remind staff of the importance of obtaining a citizenship attestation during the application phase or at the first in-person contact, and that it is a best practice to ensure that the attestation is dated so as to fully assist the program in demonstrating regulatory compliance. Further, NLSP should remind staff that in the very few cases that have non-citizen eligibility documentation with an expiration date, program staff should document continued eligibility under Part 1626 if the case remains active after the date of expiration.

Subsequent conversations with program management, during the comment period, indicated that NLSP has taken action under this CA and has frequently mentioned during staff meetings the importance of handling the citizenship attestation as mentioned above.

5. Ensure that all staff involved in case acceptance understand the correct limitations and interpretations of the program's priorities regarding the types of cases that can be accepted for "A" and "B" level work;

Comments to the DR detailed a process whereby NLSP is taking tiered corrective action to address this CA, including revision of program policy, and training of staff to ensure clarity with program policy.

6. Provide follow-up training to staff regarding the following closing code case practices:
 - Closing code "F" should not be used when staff provide service as counsel of record;
 - Closing code "Ia" should not be used when a case is actually contested;
 - When properly using closing code "F" ensure that the file provides the required details regarding the terms of the negotiated settlement;
 - When a client withdraws before any actual representation is conducted in a court case and if a withdrawal of representation is the only effort accomplished with the court that only closing code "L" is used; and
 - Before using closing code "K", a determination should be made as to whether another closing code would be more descriptive of the type of legal advice provided. Also, ensure that closing code "K" is not used when the file evidences no clear legal advice, and that files without legal advice are simply deselected and closed.

As part of this training, also provide additional guidance to staff regarding problem codes 90 through 99.

Finally, as part of this targeted staff training, ensure that all staff understands the duplicate rules that involve only closing code "A" level cases. If "A" level advice and counsel is provided contemporaneously or within a brief time frame for several different problem codes, and if all the problem codes are within the same "group of 10" (such as a 31, 32, and 37), only one case should be reported. In contrast, if the problem codes are in separate groups, such as a 37 and a 64, then two "A" cases should be reported;

In subsequent conversations with program management during the comment period, it was noted that NLSP has conducted periodic staff training that includes the above-mentioned rules to ensure that staff understand and utilize them correctly.

7. To improve PAI financial systems:
 - Cease using the current indirect cost methodology applied to PAI and adopt one of the recommended LSC overhead allocation methods. Also, the new allocation method should be used retroactively from January 1, 2011; and

- Cease allocating 100% of the salary of the PBC towards PAI, and ensure that non-PAI activities conducted by this staff member are charged to a non-PAI cost center, as documented and supported by time sheets;

Comments to the DR stated that the program would fully implement these corrective action items as stated.

8. Ensure that all private contributions of \$250 receive the required notice regarding the prohibitions and conditions which apply to the funds as required by 45 CFR § 1610.5(a); and

Comments to the DR, and subsequent communications with program management evidenced that this CA has been implemented.

9. Diversify certain fiscal assignments so as to increase the quality of the segregation of duties by ceasing having a single employee conduct so many functions under the area of procurements.

In conversations with program management during the comment period, program management stated that increased separation of duties would be adopted, as directed, in the area of procurements.

NEIGHBORHOOD LEGAL SERVICES PROGRAM
HEADQUARTERS/NORTHEAST
680 RHODE ISLAND AVENUE NE
WASHINGTON, DC 20002
(202) 269-5100
(202) 832-1984 (FAX)

October 5, 2011

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

RE: CSR/CMS Visit, Recipient No. 309080

Dear Ms. Rath:

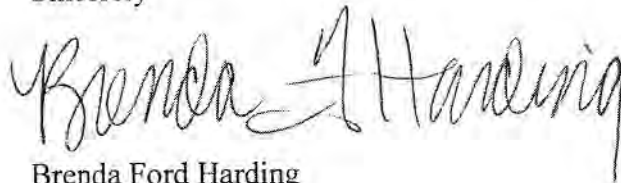
Enclosed is Neighborhood Legal Services' (NLSP) Response to LSC Draft Report for the on-site Case Service Report/Case Management System review of NLSP which took place on February 7-11, 2011.

I have carefully reviewed the report and submitted comments in my Response. In addition, I would like to accept your offer to make the Office of Compliance and Enforcement available as a resource to us. When I returned to legal services, after a 5 year absence, David De La Tour was of tremendous assistance to me and the entire NLSP staff. Thank you!

During the most recent visit, while not at the best time, was very enjoyable. The team was very courteous and comprehensive. It was of tremendous benefit to the staff. I think I got the most benefit because the staff realizes that the trainings are important and I was overly exaggerating about compliance issues.

Thank you for giving me an extension of time. NLSP has been having severe mail problems with inconsistent delivery of mail. We have filed a complaint; but, didn't get any assistance until we reported it to Congresswoman Eleanor Holmes Norton.

Sincerely



Brenda Ford Harding
Executive Director



NEIGHBORHOOD LEGAL SERVICES PROGRAM

**RESPONSE TO OFFICE OF COMPLIANCE AND ENFORCEMENT
DRAFT CASE SERVICE REPORT/CASE MANAGEMENT SYSTEM**

**Recipient Number: 309080
February 7-11, 2011**

III. FINDINGS

Finding 1: Sampled cases evidenced that the NLSP automated case management system ("ACMS") is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. However, some improvement in a few case coding practices is warranted.

NLSP Response:

NLSP agrees with this finding. In addition, NLSP will close the case in the ACMS and will not report the missing file as a LSC case.

Finding 2: Overall, intake practices were strong. NLSP staff consistently screen applicants for required income, assets and other eligibility data. However, the income and assets policy provided in advance of the review was outdated and needed revision, which NLSP addressed immediately following the review by providing a new draft to LSC.

NLSP Response:

NLSP agrees with most of the finding. NLSP periodically conducts training intake practices. However, it appears that some staff may not understand the policies. In 2011, NLSP revised its Legal Representation Manual and the Administrative Manual that is more comprehensive and easier to follow. This will address LSC's concerns. All staff will receive a copy of the manuals. In the near future, we will conduct another training session on intake and other areas.

Finding 3: Sampled cases evidenced that NLSP generally maintains the income eligibility documentation required by 45 CFR § 1611 and CSR Handbook (2008 Ed.), § 5.3.

NLSP Response:

NLSP agrees will take all actions stated in the finding.

Finding 4: NLSP maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed.), § 5.4.

NLSP Response:

NLSP agrees and will take all actions stated in the finding.

In Case No. 10E-4010753 (not 10E-4010753 as listed by OCE), NLSP has not completed the review of 2010 cases before reporting to LSC. NLSP deselected the case and it was not when reported to LSC in March 2011.

Finding 5: NLSP is in compliance with the prohibitions of 45 CFR Part 1626

(Restrictions on legal assistance to aliens). However, there were a few cases in which the necessary level of required documentation was not obtained prior to commencement of work on the case.

NLSP Response:

NLSP agrees and will take all actions stated in the finding

Finding 6: Sampled cases evidenced that NLSP is in substantial compliance with the retainer agreement requirements of 45 CFR § 1611.9.

NLSP Response:

NLSP agrees and will ensure that all retainers include subject matter.

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

NLSP Response:

NLSP agrees.

Finding 8: Sampled cases evidenced substantial compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). However, additional training and direction for staff is needed to ensure consistent application of case acceptance priorities for advice and counsel or brief service cases.

NLSP Response:

NLSP agrees and will take necessary action.

Currently, NLSP is reviewing its Case Acceptance Guidelines. All of the staff are included in this process. After the review by the Board, no later than December, 2011, the entire staff will receive training in this area.

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

NLSP agrees.

Finding 10: The program's application of the CSR case closure categories under Chapters VIII and IX, CSR Handbook (2008 Ed.) were generally strong. There were a few exception

patterns noted requiring correction. Also, NLSP was in substantial compliance with the use of problem codes.

NLSP Response:

NLSP agrees and will take all actions stated in the finding.

Finding 11: Sampled cases evidenced substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3 (Timely Closing of Cases)

NLSP Response:

NLSP agrees and will take all actions stated in the finding

Finding 12: Extensive testing of potentially duplicate cases evidenced substantial compliance with CSR Handbook (2008 Ed.), § 3.2. NLSP both avoids duplise reporting as well as correctly reports multiple unique cases when required by the CSR Handbook. However, further training of staff regarding one duplicate rule regarding certain related "A" level cases, is needed.

NLSP Response:

NLSP agrees and will take all actions stated in the finding.

Finding 13: Review of outside practice activities and related program practices evidenced compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

NLSP Response:

NLSP agrees.

Finding 14: Sampled cases, sampled financial records and interviews with staff evidenced compliance with 45 CFR Part 1608 (Prohibited political activities).

NLSP Response:

NLSP agrees.

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

NLSP Response:

NLSP agrees.

Finding 16: Since the addition of a Pro Bono Counsel in July 2010, NLSP has significantly improved PAI program organization and PAL compliance systems, including related documentation, policies, procedures and practices. NLSP is in substantial compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PM cases. However, NLSP must adopt a new indirect cost allocation method for PAL

NLSP Response:

It is correct that the Covington & Burling provides two attorneys and one paralegal to NLSP for six-month rotations. However, recently, the attorneys may stay for 7 months and the paralegal may stay up to one year. The secretary, until recently, was with the program for over 8 years.

Since October 2007 instead of July 2011, NLSP has had a full time Pro Bono Counsel.

When the Pro Bono Counsel arrived, there were a written set of policies regarding the PAI program activities. The up-to-date infrastructure of attorneys to participate in the various PAI efforts were not lacking; rather, the infrastructure was inefficient and it was difficult to ascertain the filing procedure. In addition, the former Pro Bono Counsel, who moved out of state was available to assist us in the transition. I would agree that the new Pro Bono Counsel reactivated, reorganized, created, and/or improved the Pro Bono programs.

OCE did direct us to cease the current indirect cost methodology. However, NLSP was not given any recommended methods. See Attachment showing our current methodology and the Draft PAI allocations method. NLSP is also requesting the OCE provide us with recommended methods of PAI allocations. At that time, NLSP will adopt a new PAI allocation retroactive to January 1, 2011.

There should not have been any cases with direct legal advice from the Pro Bono Counsel. Cases are referred to the Pro Bono Counsel after the case has been assessed. However, if this does occur, NLSP will ensure that the case is coded as a staff case and charged as a staff and not a PAI cost center.

The Westwood Program is not a PAI activity; but, a fellowship program funded by Covington and Burling. In addition, the Westwood staff members are not law students-but, staff attorneys who, unlike the Covington rotation attorneys, are employees of NLSP. The Pro Bono Counsel does not any role in the Westwood Program.

NLSP will ensure that only proper PAI activities will be funded under the PAI cost center and that NLSP will ensure that the Pro Bono Counsel clearly account all other activities to non-PAI cost center.

Finding 17: NLSP 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 nonprofit organization.

NLSP Response:

NLSP agrees.

Finding 18: Sampled program financial and case records indicated substantial compliance with the requirements of 45 CFR Part 1635 — Timekeeping requirement.

NLSP Response:

NLSP agrees.

Finding 19: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees) during its effective period.

NLSP Response:

NLSP agrees.

Finding 20: Sampled cases reviewed and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

NLSP Response:

NLSP agrees.

Finding 21: Sampled cases and interviews with staff evidenced NLSP's 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).

NLSP Response:

NLSP agrees.

Finding 22: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

NLSP Response:

NLSP agrees.

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

NLSP Response:

NLSP agrees.

Finding 24: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

NLSP Response:

NLSP agrees.

Finding 25: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of Prisoners).

NLSP Response:

NLSP agrees.

Finding 26: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

NLSP Response:

NLSP agrees.

Finding 27: Sampled cases and interviews with staff evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

NLSP Response:

NLSP agrees.

Finding 28: Sampled cases and interviews with staff 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)).

NLSP Response:

NLSP agrees.

Finding 29: NLSP has not been providing the required notice to private donors required by 45 CFR Part 1610.5(a).

NLSP Response:

NLSP agrees.

Finding 30: A limited review of NLSP internal control policies and procedures demonstrated that the program's policies and procedures generally compare favorably to the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of LSC's Accounting Guide for LSC Recipients (2010 Ed). However, weaknesses in two (2) areas were identified.

NLSP Response:

NLSP is unclear about the meaning of this finding.

LSC recommends that "NLSP should segregate the duties/functions related to ordering and maintaining supplies. NLSP is a relatively small organization and, even though it has satellite locations, office supply orders are first requested and ordered through at headquarters.

1. Check disbursements function is currently divided between four individuals and NLSP should streamline the various tasks.

NLSP's check disbursements procedure (which was approved by the LSC Inspector General's audit of NLSP in 2009) is as follows:

- (1) The invoices are brought to the Executive Director.
- (2) The Executive Director gives the invoices to the Contract Accountant, who works usually on Wednesdays and Thursday.
- (3) The Accountant reviews the invoice for accuracy, review to make sure that it has not

already been paid, assign cost allocations, and prepares the checks.

- (4) The Executive Director reviews the cost allocation and signs the check. If the amount is over \$10,000 or if the check is issued to the Executive Director, the Executive Director will get second signatures.

NLSP will like to discuss with OCE how this process could be streamlined.

What does LSC mean by: NLSP should add a second signature requirement for the manually signed checks? Does this mean the checks that are not generated by our system? Since the accountant is a contractor and usually works two days a week, those checks, which are rarely created, are for emergency use only. These checks are authorized the Executive Director. Since the Executive Director signs the check, another staff member will actually write the check. A copy of the check and supporting document is submitted to the Accountant upon her return.

2. One employee compares the purchase order to the vendor invoice and verifies the accuracy of the vendor invoice. The accountant maintains control of unpaid vendor invoices.

Finding 31: A review of several outstanding LSC Technology Innovation Grant ("TIG") balances evidenced that NLSP fiscal records show an unexpended TIG grant fund balance since 2007 of \$11,479.

NLSP Response:

NLSP will be working with OCE to resolve the issues with TIG.

Finding 32: Bank reconciliations are being performed monthly and timely. NLSP pays a monthly fee on one of its operating accounts, which is unnecessary.

NLSP Response:

NLSP has been trying for several months to close the fee-charging account. Previously, NLSP receive interest that was substantially more than the fees charged. Finally, when I personally went to the PNC to talk with our representative, she told me that NLSP had to make the request in writing. Although I made the request in writing, it took several months before PNC closed the charging account and reimburse the fees charged since May, 2011.

Finding 33: The NLSP Accounting Manual needs to be updated and revised.

NLSP Response:

NLSP agrees. NLSP has been working on the Accounting Manual. The draft manual will be submitted to our Board Finance Committee within the next week for review. Then, the full Board of Directors will vote on it in early November, 2011.

IV. Recommendations

Although NLSP has been taking these actions, NLSP agrees to all of the recommendations.

V. REQUIRED CORRECTIVE ACTIONS

NLSP is unclear about the following recommendations. NLSP will take the actions listed after we receive clarifications from LSC and the approval of our PAI allocations.

1. Open Case No. NW 96-11-004

This case was closed using 12/31/2010 date, after OCE left the program in February, 2011. This case was deselected as untimely closed and not reported in the 2010 CSR.

There were several attorneys who worked on the case. The most recent attorneys were Michael McKeown and Bennett Lerner. Both of these attorneys were fully funded by the D.C. Bar Foundation Public Funds and not LSC.

Query: do we attempt to find out the attorneys and time spent on the case for the other cases involved even though we do not have records dated back 14 years. How do we charge those times?

2. Closed Case No. 09E-3009508

NLSP represented a client in an employment compensation case, who was eligible under the LSC guidelines. NLSP won his unemployment benefits in an administrative hearing and the case was closed on 3/7/2010.

This case was supported by D.C. Bar Foundation Funds and not LSC.

Open Case No. 10E-3011954

The client involved in Case No. 09E-3009508 came back to NLSP in October, 2010 because the employer appealed the decision. At the time the client was not income eligible since he was receiving Unemployment Benefits. NLSP is representing the client because he could not find anyone to represent him in court.

This is the case that LSC should have listed that cannot be charged to LSC. However, most of this case will be charged to public funds. In May 2011, NLSP received a new public grant which does not fully non-salary costs. We will be reviewing the hours accumulated since May, 2011 and ensure that the non-salary costs are not charged to LSC.

3. 08E-1008483

Most of this case was handled by pro bono attorneys. NLSP's attorneys got involved only because the Pro Bono Counsel did not properly handle the case.

NLSP will allocate the hours of the Pro Bono Counsel and allocate the costs to non-PAI cost center.

APPENDIX

Draft PAI Allocations

Current Allocation Method

Cases to be charged to Non-LSC Funds *(removed)*

DRAFT

LSC PAI - ALLOCATION PROCEDURE

This Private Attorney Involvement (PAI) Program expense calculation procedure was developed to comply with the requirements of the Code of Federal Regulations (CFR) Part 1614 to document methods of allocating common costs to PAI and as a guide to compliance for NLSP.

PRIVATE ATTORNEY INVOLVEMENT

The designated employee completes detailed time and attendance records showing the amount of time spent on PAI activities semi-monthly. The Director of Compliance and Enforcement reviews the employee's daily time records and timekeeping for accuracy and completeness of records.

The Accountant computes and calculates actual percentages of PAI activities by dividing total hours worked and actual PAI time calculated based on timekeeping verifying allocations of percentages per employee. The Accountant then calculates the PAI non-personnel costs, such as rent, utilities, etc., allocated based on the percentage by dividing the sum of PAI case handler personnel costs and total personnel case handler costs. This percentage is applied to the various total shared costs for the year to determine the amounts allocated to PAI. Finally, the Accountant calculates direct payments to private attorneys, travel and training expenses and that are allocated to PAI.

NLSP CURRENT ALLOCATION METHOD AND RESPONSE TO

- LSC states that the cost allocation matrix is “overly-complicated” and has “four interrelated worksheets.” The cost allocations used by NLSP has four basics: **Direct Cost Allocations** – cost attributable to individuals directly assigned to a particular Funding Program. This would include salaries, benefits and any other cost directly incurred by that individual. Since NLSP have multiple programs funding requirements, this approach will best meet those program requirements. **Cost Allocation by Location** – NLSP has three locations and there are costs that can be specifically attributable to that location. This would include rent, utilities, and any other cost attributable to that specific location. These costs are allocated based upon the program individuals directly assigned to that location. **Cost Allocation by Function or Position** – Attorneys’ vs. Non-Attorneys’. Costs that can be directly attributable to attorneys’ like legal library and professional liability insurance are allocated among attorneys and paralegals regardless of location or program. **Cost Allocation among all staff** – This would cover cost that cannot be assigned to the other categories like office supplies and technology cost.
- A **reallocation** occurs when an individual, mostly attorneys’, is reassigned to a different program funding source and that funding source requires direct and indirect cost to be charged to that source. The process is designed to match program cost as close as possible to direct program funding as possible. This process ensures that each program, including LSC, is properly assigned with its appropriate program cost.
- Since the LSC Audit, NLSP has discontinued allocation cost like bank charges and payroll fees.

The process is not cumbersome in that once the allocations are keyed into the accounting system; each disbursement is automatically allocated based upon the category matrix.

- LSC indicated that costs associated with “The Westwood Internship Program” are allocated to PAI. This is not correct. No Cost associated with the Westwood Program is

allocated to PAI. All Westwood Program cost are allocated to its own program code because it has its own funding source.

- LSC recommends that “NLSP should add a second signature requirement to manually signed checks.” NLSP does have a second signature requirement for all checks (both manual and system generated) over \$10,000. NLSP generated manual checks very infrequently, perhaps, once a quarter at most, on average. Additionally, the Executive Director is the only individual who may request or prepare a manual check.

LSC recommends that “NLSP should segregate the duties/functions related to ordering and maintaining supplies. NLSP is a relatively small organization and, even though it has satellite locations, office supply orders are first requested through the Executive Assistant at headquarters. If supplies are not available at the headquarters office, the