



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

New Center for Legal Advocacy
October 21-24, 2008
Case Service Report/Case Management System Review

Recipient No. 122087

I. EXECUTIVE SUMMARY

Finding 1: The NCLA automated case management system (“ACMS”) has sufficient detail and is understood by the intake staff, and thus supports an effective and compliant intake process. However, some sampled files had missing or incorrect information in some required data fields, an issue which is being actively addressed by NCLA management.

Finding 2: Overall, the NCLA intake procedures and practices were found to support proper applicant screening under LSC requirements. However, the review indicated that certain program forms and policies should be updated. NCLA initiated and completed the necessary policy updates following the LSC visit, with final adoption of new policies occurring at the March 2009 NCLA Board meeting.

Finding 3: Case sampling evidenced that NCLA obtains and maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3. However, there were a few over-income cases sampled that lacked the required evidence regarding the exception(s) applied.

Finding 4: NCLA maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, program policies and forms related to asset screening need some updating and clarification by the program’s management and Board.

Finding 5: NCLA is in compliance with the restrictions on service set forth by 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, NCLA is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that a few files lacked a required citizenship attestation.

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

Finding 7: NCLA is in compliance with the requirements of 45 CFR Part 1636 (Client identity and statement of facts).

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

Finding 9: A majority of files reviewed complied with the requirements of the CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were some staff files sampled that demonstrated a need for enhanced detail regarding the documentation of legal advice. There were also some PAI files that lacked clear provision of legal advice.

Finding 10: Overall, the program’s application of the CSR case closure categories is consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.)

Finding 11: NCLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 for staff cases. Improvement in oversight and timely closing for PAI cases is necessary.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

Finding 15: Assessment of subleased and shared space in the NCLA Plymouth office indicates that the space arrangements themselves do not violate the Program Integrity requirements of 45 CFR Part 1610.

Finding 16: NCLA is in compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. The NCLA PAI effort includes various service types covered by the regulation. However, for some extended cases, there was inadequate evidence of compliance with 45 CFR § 1614.3 (d)(3) regarding case oversight and follow-up, as several dormant files were identified. Also, several minor errors in payments to PAI attorneys were noted.

Finding 17: The review of sample time records evidenced compliance with the requirements of 45 CFR Part 1635 – Timekeeping. Program timekeeping is being kept electronically and contemporaneously.

Finding 18: Bank reconciliations for the payroll, operating and client trust accounts are being performed monthly and timely.

Finding 19: NCLA is in compliance with 45 CFR § 1627.4(a) that prohibits programs from using LSC funds to pay non-mandatory membership fees or dues to any private or nonprofit organization.

Finding 20: Sampled general expenses and related documentation evidenced substantial compliance with 45 CFR Part 1630 – *Cost Standards and Procedures*. However, a few late payment fees and related finance charges to the corporate credit card did not meet the LSC cost allowability standards, and must be returned to the LSC account.

Finding 21: The review of the program’s internal controls indicated an inappropriate concentration of responsibilities. In addition, there was noted a lack of ongoing control and proper oversight of the program’s Petty Cash Fund.

Finding 22: Sampled cases and limited review of NCLA accounting and financial records evidenced that NCLA has complied with the attorneys' fees restrictions of 45 CFR Part 1642.

Finding 23: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 29: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

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

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

II. BACKGROUND OF REVIEW

On October 21-24, 2008, the Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) review at the New Center for Legal Advocacy, Inc. (“NCLA”). The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable laws. A three-member team of LSC staff conducted the review – comprised of two attorneys and one fiscal analyst. In accordance with the approved work plan, sampled cases were reviewed, intake was assessed, the program’s PAI program was reviewed, and several reviews and tests of the program’s fiscal records were conducted. Both offices of the program were visited.

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

The OCE team interviewed members of NCLA’s upper and middle management, staff attorneys and support staff. NCLA’s case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a sample case file review was conducted. The sample case review period was from January 1, 2006 through October 2008 and included both closed and open PAI cases. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. The team reviewed approximately 120 cases, which consisted of 2006 closed files, 2007 closed files, 2008 closed files, and 2008 open files. A majority of the files reviewed were randomly selected, with a majority of cases reviewed being from 2007 and 2008.

Further, a fiscal review assessed selected financial records in order to gain a full understanding and explanation(s) of program operations, policies, and procedures to assess related fiscal

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

compliance in the following areas: Prohibited political Activities – 45 CFR Part 1608; Private attorney involvement (“PAI”) – 45 CFR Part 1614; Subgrants and membership fees or dues – 45 CFR Part 1627; Cost standards and procedures – 45 CFR Part 1630; Timekeeping requirement – 45 CFR Part 1635; and Attorneys’ fees – 45 CFR Part 1642. Also in accordance with LSC instruction, the fiscal review included some general testing of disbursements and assessment of the program’s internal controls.²

NCLA is an LSC recipient that operates two offices, in New Bedford and Plymouth, Massachusetts. The main office (New Bedford) also operates a telephone intake and advice hotline. NCLA received a grant award from LSC in the amount of \$820,000 for 2006, \$880,000 for 2007 and \$884,000 for 2008. NCLA’s 2006 self-inspection report indicated a 6.3% error rate. NCLA’s 2007 self-inspection report indicated a 4.6% error rate.

By advance letter, OCE requested that NCLA provide a list of all cases reported to LSC in its 2006 CSR data submission (“closed 2006 cases”), a list of all cases reported in its 2007 CSR data submission (“closed 2007 cases”), a list of all cases closed between January 1, 2007 and September 2008 (“closed 2007 cases”), and a list of all cases which remained open as of September 2008 (“open cases”). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that distinctions between PAI and staff cases be clearly identified in the case lists. NCLA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 9 and 10, and the LSC *Access to Records* (January 5, 2004) protocol. NCLA was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

The random case sample emphasized 2007 and 2008 closed cases. Also, older open cases, and in particular potentially dormant PAI cases, were selected for review. Also, other randomly selected cases were also used to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, and duplicate reporting.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and NCLA advance agreement signed October 16, 2008, NCLA staff maintained possession of the file and discussed with the team the nature of the client’s legal

² For the period January 1, 2006 through August 31, 2008, NCLA provided financial documentation, and/or explanation(s) for the purpose of illustrating, and corroborating the fiscal activities, and the program’s compliance with the LSC grant, including the following: the PAI component; the use of non-LSC funds; the payment of membership fees or dues; and timekeeping. The following documents were assessed: Chart of Accounts; funding codes; bank reconciliations for operating, Client Trust, and Payroll accounts for June, July, and August 2008; corporate credit card charges for May 2007 – September 2008; PAI time by employee for January-August 2008; PAI time by employee January-December 2007; PAI time by employee January-December 2006; PAI expenditures 2006, 2007, 2008; PAI Representation Agreements; PAI Fee Schedule; 2008 PAI plan; 2008 sample PAI invoices; 2007 sample PAI invoices; 2006 sample PAI invoices; vendor list; weekly time records for January 2008 (case and payroll time); Weekly time records for August 2008 (case and payroll time); Sample case time records; audited financial statements 2006; Audited financial statements 2007; and other documents, such as an internal controls analysis worksheet.

problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of the assistance provided.³ NCLA's management and staff cooperated fully in the course of the review process. As discussed more fully below, NCLA was made aware of any compliance issues during the on-site visit. This was accomplished by informing intermediaries of any compliance issues during case review as well as intermediaries in both offices as well as the Executive Director.

At the conclusion of the October 21-24, 2008 visit, OCE conducted an exit conference during which NCLA was made aware of certain preliminary findings of the review. During the exit conference, it was noted that several program policies needed to be updated, and OCE assistance in this process was offered. (In the immediate weeks following the review, NCLA management revised the relevant policies and also involved LSC in the process to ensure the necessary changes.) The program was also told that it needed improvement in the oversight and follow-up process for PAI cases so as to avoid future dormancy for such cases. In addition, various other preliminary observations were shared with the program, and all such findings are included in the Draft Report. NCLA was advised that they would receive a Draft Report that would include all of OCE's findings and the program would have 30 days to submit comments. Program comments on the Draft Report were received by email transmission dated April 17, 2009. The program's comments were fully considered and have been incorporated throughout this Final Report (FR). In addition, the program's comments are attached to this report in their entirety as an Exhibit.

³ In those instances where it was evident that the nature of the problem and/or the nature of the assistance provided had been disclosed to an unprivileged third party, such discussion was more detailed, as necessary to assess compliance.

III. FINDINGS

Finding 1: The NCLA automated case management system (“ACMS”) has sufficient detail and is understood by the intake staff, and thus supports an effective and compliant intake process. However, some sampled files had missing or incorrect information in some required data fields, an issue which is being actively addressed by NCLA management.

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

The ACMS set-up and use for intake screening was closely reviewed with several intake staff. As part of this review, multiple screens and selection options were observed to determine whether the computer intake program supports a full and compliant screening process under LSC guidelines and regulations. The ACMS was found to be effective and to adequately cover required information fields. It was noted that the computer program contains multiple information areas not used by NCLA, as the program is not tailored specifically to legal services programs, and some additional fields (not used by NCLA) are present. These fields were properly understood by intake staff as not relevant to their program and were properly bypassed. Interviews with intake staff and witness of several telephone intakes evidenced that staff are experienced in conducting intake and knowledgeable of NCLA intake policies and standards. However, case sampling evidenced some files that were missing information in a required data field, discussed below.

Case sampling evidenced some issues with the consistency of information contained in the case files and in the ACMS. It appears that some of these inconsistencies were caused by the data conversion to a new ACMS, while other errors appeared to be staff errors as they learned the new system, or failed to properly enter data. NCLA switched case management systems and converted all of their files to Legal Server in April 2007. As is sometimes common with large data conversions, the program found that some files were incorrectly converted into the new system with changed or excluded information. As a result, some electronic files sampled were missing some information. For higher service cases, the non-transferred data is sometimes available in the physical file. The following issues were observed. First, a few files had differences in closing codes between that indicated in the file and the closing code entered in the computer. Second, some files were indicated in the ACMS as LSC reportable, but the file indicated the case as non-reportable. Third, some closed files appear to have been switched by the new ACMS to again being open during the computer conversion.⁴

⁴ There were two cases identified that had been properly closed in 2006 by NCLA but which were both on the open list after the data conversion – these cases eventually would have been identified and recoded by NCLA during a future review of open cases, as they lacked any continued activity. In situations where the computer has incorrectly reopened files that were properly closed in a prior year, the proper handling of such files is to re-close them *back in the year and on the date in which the case was previously and properly closed*.

The effects of the transition appear to be time limited and something that will be remedied as NCLA continues its normal ongoing review of open and closed cases. To the extent that some of the inconsistent or missing information may have occurred due to staff error, NCLA should take steps to ensure that staff are correctly entering all correct data in all required fields. Further, NCLA should carefully review all remaining pending cases that were converted from the prior ACMS when those cases are closed, to ensure that all information necessary for LSC reporting is present. As part of this, all open cases without recent activity should be reviewed to ensure that they are accurately open and not cases that may have been changed to open during the computer conversion. Comments to the DR stated that NCLA has taken steps, and will continue to take further steps, to address data errors that arose following the program's transition from a DOS-based ACMS to its new Legal Files ACMS.⁵ Comments to the DR also stated the NCLA position that its current case management and data collection efforts are in compliance with all applicable LSC regulations and requirements and appropriately meets the needs of its clients and staff. LSC concurs with this conclusion, noting that the data conversion and data entry issues evidenced during the visit appear minor, and that NCLA has been taking affirmative actions to remedy the issues noted.

Some cases sampled were not clear whether the intake was conducted over the phone or in person. There is a dedicated ACMS field for this information that in these instances had been left blank. Many cases sampled did have the information required in this field. This was discussed with program management as an important area for improvement. It is critical that each file clearly indicates whether it was a telephonic or in-person intake, and/or whether the client was seen in person or was assisted only by phone and the US mail. This information critically relates to the proper level of documentation required under 45 CFR Part 1626 regarding citizenship and eligible residents.

In a few files, the case files notes would indicate that a case should not be reported or the file would indicate a certain closing code -- however, the ACMS coding was inconsistent with the file information.⁶ There were also a few sampled cases that were indicated as non-reported in the file, but were coded as LSC reportable.⁷

⁵ Comments also noted that overall the transfer of data was largely successful with certain problems immediately apparent while others became evident over time. Comments stated that NCLA has made concerted efforts to pay strict attention to accurate and consistent entry of all new data while targeting all automatically transferred data in order to ensure a total record of reliable case management information. These actions have included NCLA management review of every open file with a date that is prior to the April 2007 ACMS transfer data, and making appropriate corrections where necessary. Comments also stated that NCLA management also reviewed every case mentioned in the LSC DR and made corrections where appropriate. Comments also discussed how staff members have received considerable training indicated that additional training is planned, and also noted that regular NCLA staff meetings also address compliance issues. Finally, comments noted that NCLA is developing Crystal Reports to assist in identifying and correcting data errors.

⁶ There were two files sampled in which the closing code in the ACMS was inconsistent with the file information. See Case Nos. 071C0002228 and 0710001648. A third file closed on March 1, 2008, Case No. 071C0002150, erroneously used closing code "E". However, this file, which was not to be reported, would not have been properly excluded by NCLA, as this category is no longer reported to LSC. It was explained by program staff that by agreement, the closing codes discontinued by LSC were to remain in the ACMS until July 1, 2008, as requested by non-LSC programs also using the ACMS.

⁷ See 2007 Case Nos. 071C0001215 and 071C0001279. See also 2008 Case Nos. 071C0001978, 071C0001339, and 071C0001258. It is noted that the 2008 cases were not yet reported to LSC and may be corrected.

In light of the above, NCLA was requested to take some targeted corrective action to ensure that all required ACMS data fields are completed by staff, and that the file is otherwise consistent with the case closing choices made in the ACMS. Further, as discussed above, particular attention should be paid to any open cases that date before the ACMS system data conversion. As discussed above, comments to the DR detailed necessary corrective actions taken by NCLA to address these findings.

Finding 2: Overall, the NCLA intake procedures and practices were found to support proper applicant screening under LSC requirements. However, the review indicated that certain program forms and policies should be updated. NCLA initiated and completed the necessary policy updates following the LSC visit, with final adoption of new policies occurring at the March 2009 NCLA Board meeting.

A comprehensive review of the program's intake system was conducted through in-person interviews at both program offices, observation of the ACMS, and witness of telephonic intake. In addition, the core documents utilized in intake were collected and assessed.

Three staff involved with intake were interviewed – two full time intake personnel in the New Bedford office, and the one support person in the Plymouth office who does not work full-time in intake but does help facilitate and coordinate some of the applications for service that originate from the Plymouth office area. Overall, these interviews indicate that the program has dedicated significant effort to the intake area to ensure that applicants are properly screened. NCLA was initially established as an intake and referral program, with an emphasis on brief services by telephone. The majority of cases handled currently remain consistent with this initial set-up. The intake personnel function as paralegals, providing a range of brief service and advice by telephone for a majority of the clients who are accepted.⁸ NCLA also has staff attorneys who accept certain cases for higher representation including court representation.⁹ NCLA is part of a coordinated delivery structure in Massachusetts involving both the LSC-funded and non-LSC programs.¹⁰ Through this effort, other organizations exist to provide full and other services in a range of legal problem areas. There is one significant non-LSC program (South Coastal Counties Legal Services (SCCLS)), with the same service area as NCLA and often NCLA will transfer or refer certain potential clients and cases to that program as part of this coordinated

⁸ The intake paralegals interviewed, and live telephone intakes witnessed, indicate that NCLA has properly trained these persons to handle brief services and limited telephone advice in several areas. Also, these staff described an oversight system whereby program attorneys review all cases handled by non-attorneys.

⁹ The Executive Director stated his position that NCLA attorneys need to be in court as part of the general proper functioning of the program and especially in light of the program's PAI component. He explained that it is critical for private attorneys to see NCLA attorneys at the court house so that when PAI requests are made, the private bar sees NCLA as appropriately engaged in the direct and full representation of clients. Comments to the DR added to this, noting that attorney caseloads help provide consistent visibility within the legal community, better inform the intake and hotline services as a consequence of meaningful, reliable and up-to-date attorney experience with various court systems and areas of law, and promote attorney professional development and job satisfaction.

¹⁰ This new intake system, which is in development, was discussed briefly with the Executive Director. The Executive Director indicated that regardless of whatever new coordination is adopted between the LSC-funded and non-LSC funded programs that NCLA plans to continue to ensure that all clients it accepts would be subjected to a full intake screening by NCLA staff. LSC concurs with this plan, as this is necessary to ensure that all accepted NCLA clients have been properly screened, and properly documented, under LSC requirements.

effort.¹¹ Comments to the DR discussed recent changes being made to the NCLA intake system. In short, a new regional intake system was designed after the October 2008 LSC review with an anticipated adoption date of June 2009. This new system will consist of two levels, screening and intake, with the screening component being accomplished at SCCLS and with the intake level staffed by both NCLA and SCCLS staff. Comments discussed several anticipated advantages of the new system including reducing wait times for applicants and expanding the intake hours schedule.

Six full telephone intake calls were witnessed as part of the review.¹² Other partial intakes were observed and the full ACMS was also reviewed with a senior intake staff member.¹³ NCLA intake workers begin each screening by obtaining a very brief amount of pre-screening data to make a quick determination as to whether the applicant might qualify under the priority areas and general financial guidelines for program service. This pre-screening includes the geographic location of the client and legal problem, the general legal problem type and the general annual income of the applicant. Should these general questions indicate that the applicant could qualify for services, a full intake screening will be initiated. The ACMS system is used for the organization and recordation of intake information. It was noted that all of the information obtained in the pre-screening would be repeated during the full screening and recorded in the main ACMS record for the intake. The ACMS system fully addresses all necessary screening areas in an orderly and logical format, including all basic information and related detail for household composition, income, and assets, as well as compliance with 45 CFR Part 1626.

Five sequential calls were observed on one day. Of these five calls, only two were provided a full intake screening. Two other of the calls were described as “dead” – i.e. the caller had hung up sometime after their call had been placed in the waiting queue.¹⁴ The fifth caller was a

¹¹ The NCLA Executive Director stated that the non-LSC program does handle certain cases and work that would be restricted by LSC, and that this work mainly involves service to undocumented persons and over-income individuals.

¹² These live telephone intakes were observed by sitting in the room during the intake screening process with several staff. During these calls, the identity of the caller was not requested or provided to the LSC reviewer, and only the NCLA staff person could hear the statements and information provided by the callers. LSC was able to fully observe the detail of questions asked and the staff person’s use of the automated case management system for intake screening and information recordation.

¹³ This one live intake done with the senior intake staff member included witness of the related automated systems supporting intake, such as conflicts checking. Further, a detailed review of the ACMS system and a test on the system to determine how it supports the efficient collection and checking of information was reviewed with this staff member separate from the live intake. Elements studied included whether the computer will provide flags when applicants are over-income or key items are left blank, whether the program has any inappropriate default settings, and how the data can be saved and accessed within the system. The checking for potential conflicts, the tracking of applicants and clients, and the assignment of unique case numbers and client records were also reviewed. Also unique terminology available in the ACMS used by NCLA regarding applications and cases was identified and discussed, such as case “suspension” (in which the caller is determined to be not the actual client, but someone calling on behalf of a potential client – such situations can be suspended and all information saved pending direct contact by the correct party).

¹⁴ One intake paralegal stated that the program previously experimented with providing callers the option of leaving a message and then a staff member would return their call. She stated however that this process was ceased when it began to overwhelm the program’s intake staff and process. She stated that at present that there is a waiting queue that allows for a maximum of eight callers to be on hold. Callers above eight will not be provided an opportunity to wait but will have to call back at another time. Further, once the intake hours are over, it is not possible to access the intake line or to leave a message. She noted that the program does receive general messages after hours but that

current client who was provided some additional information they were requesting.¹⁵ Intake staff stated that at times current clients choose to assess the program through the intake line, but that current clients are also provided direct contacts outside of the intake access lines. Typically, current clients will have direct access to the staff person working on their case. However, intake staff noted that when a current client indicates that they have a new legal problem, the client is instructed to make a new application for service via the telephone intake system for a separate determination as to whether the new case will be acceptable and accepted.

One of the telephone intakes witnessed was determined by the intake worker to contain some factual elements applicable to 45 CFR Part 1633.¹⁶ The NCLA staff member effectively handled this call by obtaining additional screening information necessary to make a case acceptance decision. This call is discussed in further detail in the section on Part 1633, *infra*.

One of the observed intakes involved a caller who stated to the NCLA staff member (who told the LSC reviewer) that they had been waiting and on hold for 67 minutes. This applicant was the third of the five calls sequentially observed, with callers two and four having hung up before their calls were answered in turn. A different intake worker stated that in her experience most callers only wait a short time, but that on occasion she has had callers who waited 30-60 minutes. This was discussed the next day with the NCLA Executive Director who stated that the 67-minute waiting time seemed long, and that NCLA strives to not have applicants waiting for such an extended period, but that it can happen on occasion due to staff scheduling.¹⁷ It was noted by NCLA staff that a new telephone system was soon to be installed and that it was hoped that the new system would provide efficiencies to reduce applicant-waiting time.¹⁸

The above review of the ACMS and observation of actual intakes indicated that NCLA intake workers are experienced in handling different types of intake applications. Most intakes observed were a mix of all necessary core questions and other more specific subject matter or legal problem related questions. As part of the telephone intake observation process, LSC was able to observe the legal information and/or legal advice provided to several applicants who had been determined to be eligible and acceptable for the limited provision of counsel and advice by

those messages that involve a new client or new legal case are directed to use the telephone intake system to make an application.

¹⁵ When handling this call, the intake worker was able to quickly use the ACMS to locate the client's file and to provide the client updated information regarding all actions taken to date. When it was also explained to the client that NCLA was waiting for the potential client to return a citizenship attestation form along with a retainer, it was decided that another copy of these documents would be sent to the client.

¹⁶ This applicant's legal problem, eviction, did appropriately pass the preliminary subject area screening as NCLA does provide service in the area of eviction. However due to the detailed and professional manner in which the NCLA employee conducted the intake, she was able to determine during the full intake key details of the eviction, and the fact that the eviction notice cited a recent arrest by the applicant as a cause for eviction.

¹⁷ This programmatic-related information was shared after the review with the LSC OPP staff responsible person for Massachusetts.

¹⁸ Comments to the DR stated that the new intake system adopted on June 1, 2009 should reduce applicant waiting times.

the intake paralegal.¹⁹ The information and advice provided in the observed cases was detailed and expansive.²⁰

In addition to the telephone intake, NCLA staff members conduct limited outreach to client groups or community events regarding a legal area affecting the client community. Staff will bring paper intake forms to such events and will use the forms if persons want to apply for services. An example of such work is that one experienced New Bedford paralegal participates in a regional coalition addressing home ownership issues and that this work can lead to outreach to clients and new applications. Another example noted was that NCLA staff attended a foreclosure workshop²¹ produced by the Massachusetts Housing Authority and that free space was provided to NCLA for the distribution of pamphlets about the program and to discuss eligibility with interested persons, who were referred to make an application through the telephone intake system.

One *ad hoc* intake arrangement is between NCLA and the Catholic Social Services (“CSS”) in which an NCLA staff member will go to CSS and initiate intake applications for prospective clients. The intake worker will enter the intake application directly into the NCLA computer once back at the office.

As noted *supra*, the NCLA ACMS is a commercial product that is used by other legal services organizations, and therefore it contains screening fields not relevant for an LSC-funded program. For example, there are questions regarding potential legal liabilities for plaintiffs. Such questions are not relevant for the types of cases and clients screened and accepted by NCLA, and NCLA staff simply ignores the unnecessary data fields.

Also, as discussed in the related findings on intake, *infra*, there were several changes to program forms that were identified as necessary during the review. LSC notes that NCLA management immediately drafted new policies using LSC’s input as to needed changes, and provided these new drafts to LSC soon after the visit. Comments to the DR stated that these policies went final as of the March 2009 Board meeting.

¹⁹ Again, the identity of the caller was unknown to LSC, and the LSC team member only heard the questions and information stated by the NCLA staff person.

²⁰ Some callers were provided specific recommended actions to maximize protection of their legal rights, in addition to other useful sources of related non-legal assistance and information regarding the client’s problem. For example, in one eviction case, the client was given a detailed explanation of their rights, recommendations as to how to appropriately respond to the court notice, the existence of precise outside resources to use, and an explanation of the court’s “housing specialist” program and how to effectively use the housing specialist to assist in their problem, how discovery could occur in the case and advice on how to use the discovery process in their case. In addition, this client was promised several documents during the call, and was asked whether they had Internet access and the web source of several free and relevant documents including a pro se eviction packet, and other related instructions and information related to evictions in the client’s jurisdictions. This client was also counseled regarding the need to have an alternate plan to move should the court rule against them, and was provided an explanation as to the state’s laws requiring landlords to use storage facilities to protect an evicted person’s belongings, and advice about how best to ensure protection of their belongings. This individual was also informed that they could be sent the citizenship attestation and retainer forms necessary for NCLA to provide full representation, but that her supervisor would make a decision as to whether NCLA could provide an attorney for full representation and that only brief advice was promised and provided at this time.

²¹ One staff member stated that the number of foreclosures rose 72% in Massachusetts during the first three quarters of 2008 and that this issue is affecting large numbers of LSC-eligible persons.

Plymouth Office

Since the previous LSC OCE visit to this program, the Massachusetts IOLTA funding agency determined that it would engage in some restructuring of the service areas for its grants, similar to what LSC conducted in the late 1990's. As a result of this effort, the service area for NCLA expanded through the combination of two separate services areas being merged into one. Subsequently, LSC determined to follow the state reconfiguration and merge the same two service areas.²² As a result of this service area merger, NCLA acquired a second office in Plymouth that is currently staffed with two persons – a support position and one attorney.²³ With two offices, NCLA has continued with a centralized telephone intake, advice and referral system through its New Bedford office. However, a very limited number of emergency applications may be accepted/handled by the Plymouth office.

The Plymouth office could take emergencies directly as there is one support person and one attorney full-time in that office – however all Plymouth area *standard* intake is directed towards the telephone intake system. Persons who appear in person in the Plymouth office without having first made an application for service will be offered the use of an office in the Plymouth office with a telephone so that they may access the centralized intake. When applicants physically come to the Plymouth office, NCLA has adopted appropriate additional documentation procedures to enhance and expedite those applications should they be accepted. In particular, the Plymouth office support person stated that before in-person applicants make the intake call, she will ask them to first execute a citizenship attestation form in the event that they may become a client. This step is required under the regulation, as a signed citizenship attestation is needed for any client who has been seen in person. Also, each of these in-person applicants will be asked to execute a “Release of Information” form, and the Plymouth staff will make copies of any supporting documents that the applicant has brought with them such as court notices or lease agreements. Finally, the Plymouth office can also have the applicant execute a limited representation agreement (explained as needed if the program accepts them for service). The Plymouth support staff person stated that all of the above information is then faxed to the New Bedford office to integrate into the client file, if and when the client was accepted.

The Plymouth support staff member stated that they may conduct some “pre-screening” of selected eligibility criteria prior to referring applicants to the standard NCLA telephonic intake similar to the pre-screening done by the New Bedford office. However, Plymouth staff indicated that basic client intake for the Plymouth office is handled through the centralized telephone intake process in New Bedford.

²² The service area previously served by Legal Services of Cape Cod, Plymouth and the Islands, Inc. (LSCPI) was merged into the NCLA service area.

²³ The staff of the Plymouth office stated that originally three people stayed at the Plymouth office and became employees of NCLA – two attorneys and the support person. Since that time, one attorney left leaving the current office staffing level.

Finding 3: Case sampling evidenced that NCLA obtains and maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2001 Ed.), ¶ 5.3, CSR Handbook (2008 Ed.), § 5.3. However, there were a few over-income cases sampled that lacked the required evidence regarding the exception(s) applied.

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.²⁴ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2 and CSR Handbook (2008 Ed.), § 5.2.

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

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

Only one sampled case lacked evidence of financial income screening and eligibility. *See Case No. 071C0001055*. However, there were some cases over 125% of FPG that lacked necessary additional evidence of the reason the case was accepted, discussed further below.

During the review there was some confusion regarding some of the program's current policies regarding case intake and acceptance. It initially appeared that although the NCLA Board had made certain amendments to eligibility guidelines and policies that NCLA had not amended and updated its intake manual to reflect the revisions. However, it was later determined that this confusion was due to the computer conversion of data, as explained by the NCLA Executive Director. The Executive Director stated that he subsequently determined that several of the most recent or current policies had not properly converted during the change in ACMS from Wamsutta Cases to Legal Files, as this ACMS conversion also involved a switch from WordPerfect to MS Word, and apparently some documents did not make the conversion.

²⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2001 Ed.), ¶ 5.3 and CSR Handbook (2008 Ed.), § 5.3.

Ultimately, the program provided all current policies, along with evidence that such policies had been timely adopted or revised by NCLA.

Despite the intake manual being initially incomplete, the review of intake and interview of intake workers did find the correct application of the most recent policies. The one exception noted was the full allowability standard for clients with domestic violence cases, as allowed by the Kennedy Amendment. Intake staff's application of this resulted in a more restrictive interpretation. As staff members were meeting the minimum LSC standards for client eligibility, no significant compliance issue resulted. Nevertheless it is recommended that NCLA train staff so that the proper intake standards are applied to domestic violence cases.

NCLA had adopted a tiered process for clients who are eligible to 200%. The Executive Director must approve any application that is recommended for service when the client's household income falls between 175% and 200% of FPG. For clients between 125% and 175% the staff may apply one or more of the factors allowed by the LSC regulation and program policy. Program intake staff record the amounts involved with various factors, but the program does not use a spend-down system. Program staff must record all factors that apply in the client file. NCLA policy did require that for all clients over 125% that a dedicated form accepting the client as an exception is provided to the Executive Director for his signature. Some inconsistency with this was noted in a few files sampled. In some files, the factors were clearly present, but there was no signed form by the Executive Director, as required by the program's policy. In a few other files, the clients' income exceeded 125% of FPG, and there was no clear evidence of any authorized exemption under 45 CFR Part 1611 nor did some case files include an authorization form as the ED stated is required for all applicants whose income exceeds 125% of FPG.²⁵

NCLA was advised the 45 CFR Part 1611 does not require recipients to acquire an Executive Director's authorization when accepting clients whose income is between 125% and 200% of the FPG²⁶. It was further explained that the program could delegate the authority to accept over-income clients who qualify under the exceptions. As such, these files were found to have satisfied the requirements of the regulation, despite having violated program procedure. It was recommended to program management that they revisit this policy and practice, but that whatever policy is adopted, that the program should follow and enforce it. Immediately following the review, NCLA provided evidence that the program adopted a streamlined procedure for clients over 125%, in which those who fall under 187.5% no longer require the signature approval of the Executive Director. This new procedure should continue to provide adequate compliance documentation without the need for Executive Director approval which is not required by LSC. Comments to the DR described how NCLA adopted LSC's suggestion to revisit its policy and approval process for over-income clients. Comments stated that the policy now allows cases exceeding 125% of FPG, but under 175% of FPG to be documented through direct data entry into the ACMS, which cites the appropriate factors that evidence over-income

²⁵ See Case Nos. 071C00001, 071C000641, and 071C002134 that did not contain either a signed authorization form nor was a clear exemption listed.

²⁶ 45 CFR Part 1611 only requires an Executive Director's authorization for those instances in which an applicant's income is over 200% of the FPG.

exceptions. Comments also noted that a signature of the Executive Director or his designee is now only required for cases with income between 175-200% of FPG.

At the end of the review week, NCLA management stated that the program would revisit its intake policies and procedures and would consider and likely adopt several LSC recommended changes. As discussed in this report, NCLA considered and accepted several recommendations made during the review by the LSC team as the program updated several policies or forms in late 2008 and early 2009. Immediately following the October 2008 review, NCLA management engaged LSC's continued input for policy revision and then provided several new draft policies or forms for LSC's review and input. Input was provided to the program via email and telephone conference, and additional guidance is also set forth in this report, where relevant. As noted previously, final policies were adopted by the NCLA Board at its March 2009 meeting.

Group Clients

NCLA has a proper *policy* regarding group clients. This statement tracks the language of the regulation, but does not provide the necessary question format and detail so as to ensure that the staff collect the necessary detail to evidence the group's eligibility. No staff interviewed could remember a group client being screened or accepted in recent memory. Intake workers interviewed stated that no group clients had been intaked by them. Despite the lack of group clients, it is recommended that NCLA take the additional step of adopting a group eligibility *screening form* to guide staff should a group client be considered in the future. The existence of a dedicated form could be particularly relevant considering the lack of group client screening experience by the program. Comments to the DR evidenced that NCLA promptly adopted this LSC recommendation, stating that NCLA has developed a Group Eligibility Screening Form which has been provided to staff, and which will be a topic of future staff training.

Finding 4: NCLA maintains asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4. However, program policies and forms related to asset screening need some updating and clarification by the program's management and Board.

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.²⁷ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

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

²⁷ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008 Ed.), § 5.4.

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.

Review of the NCLA eligibility policies as adopted by the NCLA board, and as set forth in the available policy were found to need some adjustments to ensure that the board's instructions have been clearly reflected in the actual program policy. Despite this, the intake process followed by staff was found overall to be sufficient so as to comply with the income and assets screening of 45 CFR Part 1611, with the exception that the program can only waive the review of income or assets for clients receiving other governmental program benefits, only if the NCLA Board has specifically named that program. In light of the above, the program was requested to update its policies after the review. Contacts with program management immediately following the review indicated that program management immediately began the process of review of all of the client intake policies and update of the program's manual. Several new policies were subsequently provided to LSC for review and comment. Feedback was provided by LSC, with some additional input provided in this report, where warranted.

NCLA intake practices query applicants regarding prospective income or other potential or anticipated changes to their household income. However, during the review it was recommended to NCLA management that the program policy be more explicit regarding the requirement of screening prospective income. As part of new policy drafting conducted after the review, NCLA included updated language that clearly directs staff to inquire about prospective income, thus resolving this issue.

As discussed above, NCLA revised several intake related policies or forms immediately following the October 2008 review. On January 30, 2009, some additional changes were recommended to NCLA management regarding the asset policies as stated in the program's new draft statement. It was explained that the following changes are necessary to bring the program's policy in line with the regulation:

- The current draft NCLA policy allows for the exclusion of "household possessions", but no such exclusion is provided in the regulation. Although the NCLA intake workers were asking clients about many types of assets, NCLA should clarify that some screening and inclusion of the value of household possessions must occur.
- The NCLA draft policy allows for the exclusion of "one car" per household. It was explained to NCLA management that the policy must clarify that any vehicle excluded must be used for transportation, as set forth in the regulation. Further, the NCLA Board may wish to allow the exclusion of more than one automobile, as allowed by the regulation.

- The new draft policy allowing for screening exceptions properly lists several means-tested governmental programs that were reviewed by the NCLA Board and determined to be relevant for potential waiver of screening by NCLA.²⁸ However, the policy also includes an open-ended statement that includes a “...similar welfare, or poverty-based program...”. NCLA was instructed to remove that statement from the final policy, as only specified programs, as previously reviewed by the NCLA Board, should be relied upon for waiver of normal intake procedures.

Intake staff members were found to be applying up-to-date income and assets levels. Also, sampled case files demonstrated that NCLA maintains asset eligibility documentation as was required by 45 CFR § 1611.6 and as is required by revised 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.) § 5.4.²⁹ There was only one exception. *See* Case No. 081C0000110 which lacked any indication of asset screening in the ACMS.

It is noted that prior to the October 2008 review, NCLA asset screening policy and practices still distinguished between liquid and non-liquid assets. The program’s new draft policy adopted a suggestion made by LSC during the October 2008 review, and has simplified this distinction into one uniform class of assets, as allowed by the regulation. Also, the previous policy allowed for an amount of asset value to be added for each additional person, and was properly applied by staff – however the program was asked to clarify the language of the prior written policy, which needed minor clarification. This request was clearly addressed in the new draft policy. However, the NCLA draft policy shared with LSC indicated that the program is considering setting the assets ceilings levels in a different manner by having one set amount for families of two or more. NCLA management was informed that this is not required by the regulation, but is permissible should the Board decide to adopt this more limited approach. It was also noted to NCLA management that the program Board may wish to consider the possible effect of including personal property, and could decide to raise the financial assets limit amounts to adjust to this asset screening change, if necessary.

With its comments to the DR, NCLA was requested to provide an update as to the current status of all changes made to any intake or case handling policies. Comments to the DR provided detailed evidence regarding the changes adopted by NCLA. These changes included the following: the Executive Director no longer needs to personally approve the waiver of asset ceilings; Executive Director approval is now only required when applicant income is between

²⁸ Interviews with intake staff and file review indicated that NCLA intake staff members do not use this waiver exception for clients receiving certain government benefits, and that all applicants receive the same level of screening. As such there is no compliance issue with any incorrect application of this allowable exception. However, the Board policy was noted as not fully consistent with 45 CFR Part 1611. It was explained to NCLA management that the exception requires that the program Board actually review the income and asset standards of every relevant governmental program designated, so as to ensure that the standards applied by that other organization would make the person appropriate for service at NCLA. The Board then must adopt that program, by name, for use under this exception. NCLA was also informed that the above process and instruction should be clearly documented in Board minutes.

²⁹ The revised 45 CFR § 1611.2 defines assets as meaning cash or other resources of the applicant or members of the household that are readily convertible to cash, which are currently and actually available to an applicant. Accordingly, the terms “liquid” and “non-liquid” have been eliminated by LSC.

175-200% of FPG; “Household possessions” has been removed from the policy; The automobile exclusion has been clarified to require that the vehicle is used for transportation; specific benefits programs have been identified by the NCLA board that can be used for presumption of assets eligibility; and the distinction between “liquid” and “non-liquid” assets has been dropped.

When final policies are adopted, it was recommended that NCLA provide simple training for staff to ensure that the changes are understood and easily implemented by all staff.³⁰ Comments to the DR evidenced that the program has conducted updated training for staff regarding changes to policies or procedures. Further, in several places, comments to the DR indicated that ongoing and continued staff training will also be conducted, as needed.

Finding 5: NCLA is in compliance with the restrictions on service set forth by 45 CFR Part 1626 (Restrictions on legal assistance to aliens). However, NCLA is in non-compliance with certain documentation requirements of 45 CFR Part 1626 in that a few files lacked a required citizenship attestation.

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

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.³¹ 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.

³⁰ If the program determines that some assistance from LSC would be useful in this regard such as the provision of a focused on-line training for staff, NCLA management is encouraged to contact the LSC OCE to request assistance.

³¹ *See* Kennedy Amendment at 45 CFR § 1626.4.

All cases sampled evidenced that service was provided either to a US citizenship or someone otherwise eligible under 45 CFR Part 1626. Further, all cases sampled that required the further documentation of a citizenship attestation contained this signed statement, with the exception of two cases. The first (opened on 9/22/2003) was an emergency PAI case and was properly referred to a private attorney as an emergency case by NCLA, and prior to the program obtaining a citizenship attestation. The file clearly evidenced that the client was questioned and had stated that she was a US citizen. The file also evidenced that NCLA made two attempts to obtain a citizenship attestation from the client, but was unsuccessful. *See* PAI Case No. 031C0002675. NCLA will usually obtain the citizenship attestation prior to referral. Due to the lack of proper documentation under 45 CFR Part 1626, the program was properly deselecting this case from CSR reporting. A second file indicated that the intake was conducted in-person, and the file lacked a citizenship attestation. *See* Case No. 071C0000641 (2007 closed case).

Comments to the DR disagreed with LSC's finding of non-compliance regarding the documentation requirements of Part 1626. Comments stated that the program's overall record regarding compliance in this area indicates that there has been substantial compliance with the requirements of 45 CFR Part 1626. Comments to the DR noted that there were only two examples cited by LSC in the report, and also noted that in the 2007 and 2008 Self-Inspection reports conducted by NCLA that only one file, in 2007, was noted as lacking the necessary Part 1626 documentation. Regarding the program's comments, LSC notes that the report does have an overall conclusion of compliance with the larger critical restriction found in Part 1626, and that the finding of non-compliance only regards the proper documentation required for certain types of cases, and as such the finding has not been changed.

As discussed *supra*, the NCLA requires that staff indicate in the ACMS whether an intake was conducted by telephone or in-person. However, some sampled case files did not include this information, which resulted in the NCLA intermediary being uncertain whether the file required a signed citizenship attestation.³² NCLA should take corrective action to ensure that every file is clear as to whether a citizenship attestation is necessary and that for those files in which one is required, that it is obtained. As part of this, NCLA management may consider providing refresher training, if necessary, that emphasizes the critical need for each file to evidence whether it involved in-person or was solely a telephone contact. Further, NCLA management should direct and/or conduct additional review of cases to ensure that this issue has been corrected. Comments to the DR stated that NCLA has provided, and will continue to provide, refresher training for staff to properly note whether a case involves in-person or telephone contact, and where required, to obtain the appropriate documentation necessary under Part 1626. Comments also added that NCLA management is conducting additional reviews, and will conduct quarterly reviews, to ensure that this issue has been corrected and that staff remain vigilant in future compliance.

³² *See* 2007 Case Nos. 071C0003007, 081C0000359, and 061C00020098.

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

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.³³ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

NCLA is in substantial compliance with the requirements of 45 CFR § 1611.9. One file was noted for a missing retainer. All higher-level cases that required a retainer contained the document with one possible exception. There was one 2008 file, Case No. 071C0002248, closed as a "G" which did not have a retainer. However, it was unclear as to whether the case might actually be an "A" or "B" level and therefore did not need a retainer.

In addition, it was noted that NCLA staff sometimes choose to execute a retainer in cases that could or are closed at a lower level of service (for which LSC does not require a retainer). In three cases reviewed, that were all properly closed at the level of "A", advice and counsel, it was noted that NCLA had executed a retainer agreement with the client. However, in these three cases the scope of the representation was unclear.³⁴ As these cases did not require a retainer under LSC regulations, there was no related compliance issue. However, it is strongly recommended that NCLA management enforce its policy and require a uniform standard for execution of retainers any time staff use a retainer. Under NCLA practice and policy, all executed retainers should have a clear statement regarding both the scope and subject matter of the representation. Enforcing its policy will help the program ensure that for those cases in which retainer agreements are required by LSC that the agreement will have all necessary detail to comply with the regulation. Comments to the DR stated that NCLA staff members have discretion regarding the use of retainers for lower levels of legal services and that NCLA has typically done this for professional responsibility purposes. Comments added that lower level retainers are done so as to better delineate terms of representation for particular clients. Comments also noted that NCLA strives to effectively complete retainers in order to clearly address scope and subject matter of representation, and that the examples noted could have been improved. However, importantly, NCLA noted that in some instances that NCLA uses the retainer in lower level cases less for the language inserted by staff and more for conveying to the client the standard boilerplate retainer information including the importance of entering into an attorney/client relationship and the ramifications that can flow from that contract. Consequently, a retainer for the level of "A" or "B" service may appear incomplete (regarding the sections

³³ 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.

³⁴ *See* Case Nos. 081C0000388, 081C0000429, and 081C0000133.

requiring insertion), when in fact the purpose of the retainer was accomplished. Comments also added that NCLA previously utilized a Limited Advice Retainer, solely for “A” and “B” cases, but decided to adopt one retainer for all uses.

Finally, as part of the program’s decision to update several forms or policies after the LSC October 2008 review, a new draft retainer agreement was produced by NCLA and a draft shared with LSC soon after the visit. LSC reviewed the new draft and found it to be a strong document, but also provided a suggested addition, which was accepted by the program.³⁵ Comments to the DR explained that the NCLA retainer form was substantially revised following the LSC review, and noted that all of LSC’s suggestions were incorporated.

Finding 7: NCLA is in 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 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).

Case files sampled evidenced compliance with the requirements of 45 CFR Part 1636, where applicable.

No recommendations or corrective actions are required.

Finding 8: Sampled cases evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources).

LSC regulations require that recipients adopt a written statement of priorities that determines the cases that 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.

³⁵ It was suggested to the NCLA Executive Director that the new retainer form should also include a notice to clients regarding the necessary oversight that may occur by NCLA funding sources in which the program would be asked to evidence that clients are eligible. In a telephone conversation on January 30, 2009, the NCLA Executive Director stated that the program had incorporated LSC’s suggestion and that a new version of the retainer was created.

NCLA priorities are stated as “supporting families, preserving the home, promoting economic stability, achieving safety, stability and health and serving populations with special vulnerabilities.” Intake workers interviewed evidenced clear awareness as to the type of priority cases that NCLA will accept for either advice and counsel or brief services or to consider for further service by a staff attorney. Further, all files sampled by the team were within the service priorities of the program.

No recommendations or corrective actions are required.

Finding 9: A majority of files reviewed complied with the requirements of the CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). However, there were some staff files sampled that demonstrated a need for enhanced detail regarding the documentation of legal advice. There were also some PAI files that lacked clear provision of legal advice.

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

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

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in 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 (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6.

A majority of the files sampled had clear documentation of the existence of legal advice. However, there were several files that lacked definitive proof that legal advice or services were provided to the client, in non-compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6. Some affected files contained notes that indicated legal services might have been provided but the notes were not decisive. Some of these files had been included in a previous year CSR report to LSC,³⁶ or were in the current year coded as reportable.³⁷ Cases

³⁶ For example, Case Nos. 83-061C0000272 and 061C0002897 were both reported in the 2006 CSR but neither file had evidence of legal advice. Closed 2007 Case No. 071C0001406 was indicated as receiving advice at a divorce workshop, however the file lacked the attorney closing form which is the record of such advice.

³⁷ *See* 2008 closed Case No. 081C0000350 which was indicated as “B” Brief Service – however the file had no evidence of the legal service(s) provided.

without clear evidence of legal services should not be reported and must be deselected from the CSR.

While a majority of the closed cases reviewed did contain evidence of legal advice or services, the existence of several files without clear evidence, some of which had been indicated as CSR-reportable, indicates a need for effective and targeted corrective action. NCLA should take corrective action to ensure that when legal advice has been provided to a client, that this advice is recorded in the client's file. In the alternative, when a case lacks evidence of legal advice, NCLS must ensure that the case is properly deselected from reporting in the CSR.³⁸ As part of the program's effort, some additional training for staff might be considered – however, NCLA management should adopt new or additional supervisory oversight and monitoring of case files, especially at time of case closing, so that supervisors and management can ensure proper practices and that all clients who received legal services has those services documented in their case file. Further, this oversight system should help identify any staff members who require special attention or additional training in properly documenting legal advice in client files.

Comments to the DR noted that several of the cases cited in the DR to support the above finding were handled by the same NCLA employee, a paralegal, who no longer works at the program. These files included: Case Nos. 06IC0000272, 06IC0002897, 07IC0001406 and 07IC0000126. Also, another file identified by LSC, Case No. 071C0002150 had been properly identified by NCLA and timely excluded from CSR reporting. Further, comments to the DR indicated that NCLA was currently implementing additional management oversight with monitoring of files for CSR compliance at the time of closing, along with a more comprehensive review on a quarterly basis. In addition, this finding was discussed with the NCLA Executive Director in a June 5, 2009 telephone call. This call indicated that this issue was partially addressed by the departure of a single staff person whose files were not fully evidencing the legal advice. Further, the new procedures adopted by NCLA should be effective in ensuring that cases which receive legal advice will have adequate documentation of that advice.

Some of the PAI cases that lacked evidence of legal advice were also older potentially dormant cases that contained limited follow-up by NCLA, discussed further *infra*. As NCLA improves the frequency and effectiveness of its PAI case follow-up, it should place special emphasis on obtaining and documenting the evidence of any legal services that were provided by the private attorneys.

³⁸ It is recommended that NCLA adopt a simple "deselection" code for non-reportable cases, such as a closing code "X" to be used for files that are identified for exclusion from the CSR. Such a simple choice will help ensure that when a file is identified for exclusion, that a simple coding will ensure its deselection. Comments to the DR stated that NCLA will adopt a simple deselection code as recommended.

Finding 10: Overall, the program’s application of the CSR case closure categories is overall consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.)

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

The case sample files reviewed demonstrated that the application of the CSR case closing categories was consistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.) in almost all cases tested. There were only one case sampled that should have a different closing code under the new 2008 CSR Handbook.³⁹

Also, NCLA was found to be properly coding cases as either staff or PAI. In particular, there were cases sampled that were initially designated as PAI, and in which involvement of a private attorney was sought. However, when this was unsuccessful, these cases were properly coded and closed as a staff case due to the presence of legal advice provided by NCLA staff. *See* Case Nos. 081C0000271 and 081C0000974. There was only one exception in sampled cases – 2007 closed case 071C0002112, coded as “B” level service and as a PAI case but which contained no evidence of advice by a private attorney.⁴⁰

No recommendations or corrective actions are required.

Finding 11: NCLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3 for staff cases. Improvement in oversight and timely closing for PAI cases is necessary.

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a).⁴¹ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a)

³⁹ *See* Case No. 071C0002950 closed as “I (b)”. Notes in this case file evidenced that a notice of withdrawal had been entered and therefore the closing category of “L” should be used.

⁴⁰ As a result, this case should have been recoded then as a staff case and closed as an “A” (the highest level of service provided by an NCLA staff member). It appears that this client may have attended a workshop but no evidence of that further service, or advice by a PAI attorney, was present in the file.

⁴¹ 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).

and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

Sampled *staff cases* evidenced that NCLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as these were closed in a timely manner. However, there were several *PAI cases* that indicated potential or clear dormancy, and therefore were not timely closed. This is discussed further in the findings regarding 45 CFR Part 1614.

For staff cases, there are no recommendations or corrective actions necessary. However, NCLA should take corrective action to ensure the timely and effective closing of PAI cases,⁴² as discussed further, *infra*.

Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases.

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

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

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

NCLA is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. Several files for similar or same clients

⁴² Comments to the DR stated that NCLA is revising its handling of oversight for PAI cases including reviewing for timely closing and related compliance issues.

were targeted and checked for possible duplication. None of the files targeted as possible duplication were duplicates. Further, none of the non-targeted files sampled indicated any duplicate case counting or reporting. Interviews with program staff also indicated clarity regarding LSC rules that define and proscribe the counting of duplicate cases.

No recommendations or corrective actions are required.

Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

Interviews with program staff and management, and sample case review evidenced no activities prohibited by Part 1608. Further, a limited review of accounting records and documentation for the period of January 1, 2006 through August 31, 2008 did not indicate any NCLA expenditures of grant funds, or the use of personnel or equipment for any prohibited political activities proscribed by 45 CFR § 1608.3(b).

No recommendations or corrective actions are required.

Finding 14: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).

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

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

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

None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Further, the NCLA Executive Director stated that the program has not made any claims for attorneys' fees, nor collected any such fees. The fiscal team member confirmed the absence of any attorney fees payments within the program's financial records.

No recommendations or corrective actions are required.

Finding 15: Assessment of subleased and shared space in the NCLA Plymouth office indicates that the space arrangements themselves do not violate the Program Integrity requirements of 45 CFR Part 1610.

45 CFR § 1610.8(a) requires recipients to maintain program integrity by having "objective integrity and independence from any organization that engages in restricted activities." The regulation specifies three separate factors, each of which must be met, for a recipient to be determined to have objective integrity and independence from such an organization. First, the organizations must be legally separate entities. *See* 45 CFR § 1610.8(a)(1). Second, there can be no transfer of LSC funds from the recipient to the other organization and LSC funds cannot subsidize restricted activities. *See* 45 CFR § 1610.8(a)(2). For the purposes of Part 1610, a "subsidy" is:

a payment of LSC funds to support, in whole or part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a "fair-market price" for such use.

62 Fed. Reg. 27698 (May 21, 1997) (Preamble to final rule).

Finally, the organizations must be physically and financially separate. Physical and financial separation is characterized by a variety of indicators, including but not limited to:

1. The existence of separate personnel;
2. The existence of separate accounting and timekeeping records;
3. The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and
4. The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

45 CFR § 1610.8(a)(3).

The financial separation requirement is separate and distinct from the non-subsidization requirement. While separate accounting may be evidence of lack of subsidization, the regulation explicitly states that mere bookkeeping separation is insufficient to meet the physical and financial separation requirements. Taken together, the recipient and the other organizations engaged in LSC- restricted activities must operate as two separate entities (that may collaborate), and cannot operate as essentially one entity with administrative separation on paper.

Physical and financial separation is the most nuanced and complex of the three factors required by the regulation. Whether physical and financial separation exists is determined on a case-by-case basis, considering the totality of the circumstances. Individual factors present in one situation might be acceptable in the context of the overall relationship between the entities, although they might be unacceptable in another situation in which other factors weigh more heavily against a finding of sufficient separation. Each factor weighs for or against separation. Some factors are weighed heavily; some lightly. It is the total weight of all the factors taken together that LSC looks at in determining the strength of the grantee's physical and financial separation from the other entity.

Thus, determinations taking into account the physical and financial separation standard must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

62 Fed. Reg. at 27698.

Ultimately, in all situations the separation between the organizations must be clear to clients, courts, agencies and others with whom the recipient comes into contact, and to the general public. *See* LSC/OLA External Opinion 2003-1009 (June 24, 2003).

In addition to Part 1610, LSC issued a program letter on October 30, 1997, with "Guidance in Applying the Program Integrity Standards". In discussing the separate personnel factor of physical and financial separation, LSC stated: "There is no per se bar against a recipient employing part-time staff who are also employed part-time by an organization which engages in restricted activities." 1997 Program Integrity Guidance at 3. LSC cautioned, however, that "the more staff 'shared,' or greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised." *Id.*

NCLA acquired the current Plymouth office, which belonged to a prior LSC recipient, as part of a merger and reorganization of several programs in its current service area that resulted in two LSC service areas merging into the current NCLA service area. The prior LSC recipient, LSCPI merged with a non-LSC program, which has since been renamed South Coastal Counties Legal Services, Inc. (SCCLS) and no longer receives LSC funds. As part of the agreements regarding the rearrangement of program staff and service areas, NCLA became the LSC grantee and was required to maintain an office in Plymouth, and NCLA initially acquired three staff from LSCPI. Currently two of those staff members remain employed by NCLA, and they are the full NCLA staff at the Plymouth office. Also, at the time of the merger and reorganization of programs,

NCLA contracted with SCCLS to sub-lease a small two-room office in Plymouth to SCCLS, as discussed below.

Because SCCLS engages in some restricted activities, that could include service to LSC ineligible persons, including clients who would not qualify under the citizenship requirements of 45 CFR Part 1626, this arrangement has to be considered under Part 1610. A visit to the NCLA Plymouth office with the NCLA Executive Director allowed the team to conduct a careful inspection of shared office that NCLA sub-leases to SCCLS. The following relevant information was collected during and after the October 2008 review.⁴³ In addition, significant additional information was provided by NCLA with its comments to the DR, and in subsequent telephone conversations between the NCLA Executive Director and LSC staff.

LSC only reviewed the situation involving the Plymouth offices and has not conducted a full Part 1610 program integrity review of the entirety of NCLA's operations or relationship with SCCLS or any other entity. As such, this finding should not be read as a program integrity evaluation or endorsement of any other aspects of NCLA's operations. Furthermore, the findings, recommendations, and corrective actions in this report are based on the facts and history of this situation only; they do not necessarily apply to other programs in different situations. For purposes of this analysis it is assumed that NCLA and SCCLS are legally separate entities.

Office Entrances

NCLA and SCCLS have separate entrances from the hallway into their respective offices. However, inspection of the actual leased space indicated that the SCCLS office space has open and ongoing full access into the NCLA office area. An unlocked door separates the SCCLS and NCLA offices. Also, pursuant to the lease, SCCLS has access to the NCLA conference room, which is considered to be a shared space.⁴⁴

Signage

The program identification signage for SCCLS was defective at the Plymouth office. NCLA is properly identified. However, SCCLS is not. The building's lobby directory as well as the hallway entrance door for SCCLS both listed a different program. Both locations stated the program identification as the prior LSC recipient, LSCPI. Nonetheless, the signage problem did not involve confusion regarding the separation of NCLA from SCCLS.

Lease Term Regarding Part 1610

Comments to the DR provided additional detail regarding its Part 1610 compliance efforts. Comments stated that from the initiation of the Plymouth Office arrangement with SCCLS

⁴³ It should be noted that the NCLA Executive Director indicated an active and open interest in addressing any concerns that may arise regarding compliance with Part 1610, and stated that the arrangement observed during the October 2008 review had been carefully formed in good faith between the two parties with an ongoing intent to comply with the LSC Program Integrity requirements.

⁴⁴ Comments to the DR clarified that the filing cabinets in the shared library space contain some case file records of LSCPI, a previous LSC-funded provider before the formation of SCCLS. Comments clarified that no NCLA client records are located in the shared library space.

NCLA has sought to comply closely with every requirement of Part 1610 including the Program Integrity provision, as evidenced in Paragraph 1. of the sub-lease for the SCCLS space that states:

Parties acknowledge and accept the application of the regulations of the Legal Services Corporation (45 CFR 1610, Use of Non-LSC funds, Transfers of LSC Funds, Program Integrity incorporated herein by reference) directly impacting upon this Sub-lease and the parties relationship hereunder.

Comments to the DR point out that the clear intent of this provision is to implement the 1610 requirements putting SCCLS on notice that in all respects of the relationship, NCLA was advising their partner program that LSC provisions would control the terms of the tenancy.

Financial Arrangement

A sub-lease agreement dated May 18, 2006 set forth the terms of this arrangement. The lease requires a monthly payment of \$100 by SCCLS. In addition, NCLA received the significant additional consideration of transfer of "...all office furnishings and equipment in place..." at the Plymouth office, as transferred by LSCCI to NCLA. NCLA appears to have received a significant amount of materials and equipment pursuant to this lease term.⁴⁵

By email dated November 4, 2008, the NCLA Executive Director stated that by his calculation that the space rented by SCCLS (not counting the shared space) represents approximately 7.6% of the total space (excluding common areas) and that the SCCLS rental payment represents approximately 4.7% of the total rent for the premises. The NCLA Executive Director also stated that at the time of the sub-lease execution with SCCLS the total rent for the office was \$2100, that since that time the rent has increased by \$84 to \$2184, and that the sub-lease with SCCLS has not been re-negotiated yet since the rent increase. Considering the total value of the lease including the monthly payments and the value of the transferred office furnishings and equipment, it appears that NCLA has not subsidized SCCLS in this arrangement.

The sub-lease sets forth that NCLA and SCCLS will have proportional sharing of utility expenses. Clause three of the lease states:

Utilities shall be shared and payable by the parties according to the percentage of space occupied by each party within the premises based upon square-footage of space used. The percentage of utilities paid by the parties shall be 10% paid by SCCLS and 90% paid by NCLA. All other expenses related to the premises shall be the sole responsibility of the Sub-lessor.

As this issue arose towards the end of the October 2008 review, the NCLA Executive Director was requested to conduct follow-up review of NCLA fiscal and other records to determine how

⁴⁵ In an email to LSC from NCLA dated November 4, 2008 the transferred furnishings were described as including all desks and related office equipment for the four offices in Plymouth; conference room table and chairs, bookcases and books, approximately 12 filing cabinets, computers in the four offices and one computer at a secretarial desk, four common area desks, printers, a copying machine, fax machine, telephones, shredder, typewriter, common area furniture and other miscellaneous materials such as office supplies.

the ongoing utilities sharing arrangement has been implemented in practice. With its comments to the Draft Report, NCLA was asked to provide additional detail regarding payments and billing for the sublease with SCCLS. Comments to the DR stated that the monthly rent paid by SCCLS was current and up-to-date with no arrears and that due to an oversight in billing by NCLA, utilities payments were not up to date, but that the parties were currently calculating the total payment due by SCCLS. In a telephone conversation on June 5, 2009, the NCLA Executive Director stated that the utilities charges had been billed in full, and fully paid by SCCLS, and that as of June 2009 there were no past-due amounts pending.

Also, NCLA staff stated that NCLA allows SCCLS staff to use the NCLA copier in the Plymouth office. As explained in comments to the DR, use of the copier by SCCLS has been limited to purely occasional use. Comments also noted that SCCLS use of the shared library space has been also extremely limited. Comments stated that sometimes weeks if not months have elapsed between SCCLS working in the SCCLS space, with the concomitant infrequent possibility of use of the shared space.

Comments to the DR described how the parties began to discuss new terms of this contract, which has a renewal date of July 1, 2009. As part of this, the NCLA board determined that a rent increase would be necessary for SCCLS. Comments stated that following NCLA's review and discussion with the SCCLS Executive Director and subsequent review by the SCCLS Board of Directors, SCCLS has notified NCLA that it will not renew the lease for the Plymouth space. As such, the current arrangement will expire on June 30, 2009. Comments stated that the two programs are discussing steps for an orderly transition schedule for the space so that SCCLS can vacate Plymouth on or before the expiration date. Comments noted that there should be no continued or prospective issues under Part 1610 relative to the Plymouth space as a result of the expiration of this agreement.

In consideration of the additional information provided in the NCLA comments, LSC concludes that NCLA has taken sufficient actions that demonstrate compliance with Part 1610 regarding this sublease arrangement, and that the program is in compliance with the Program Integrity requirements of the regulation.

Finding 16: NCLA is in compliance with 45 CFR Part 1614, which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. The NCLA PAI effort includes various service types covered by the regulation. However, for some extended cases, there was inadequate evidence of compliance with 45 CFR § 1614.3 (d)(3) regarding case oversight and follow-up, as several dormant files were identified. Also, several minor errors in payments to PAI attorneys were noted.

45 CFR Part 1614 requires LSC recipients to devote an amount equal to 12.5% of LSC and/or non-LSC funds towards the involvement of private attorneys in the delivery of legal assistance to eligible clients and is referred to as "PAI 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.

The NCLA PAI program includes several types of services by private attorneys, as set forth in its 2008 PAI plan provided to LSC. Potential services allow for full case service, limited advice and counsel by telephone staffed by volunteer attorneys, one pro se family law workshop, a consumer debt management clinic, and attorney mentoring. The Audited Financial Statements (AFS) for the years ending December 31, 2006 and 2007 reported separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). A separate schedule "LSC Funds" reported a total of Private Attorney Involvement Funds of \$157,335 in 2006 and \$124,526 in 2007 representing 19.17% of the total basic field grant (\$820,496) in 2006, and 14.13% of the basic field grant (\$881,098) in 2007. Comments to the DR stated that NCLA is proud of its PAI program regularly devoting in excess of the minimum LSC requirement of 12.5% towards the involvement of private attorneys in the delivery of legal assistance to eligible clients and notes that NCLA strives to meet the needs of clients with various means for private attorneys to participate in the delivery of pro bono services.

Reduced-Fee Payments

One PAI component involves the payment of reduced-fee compensation to private attorneys by NCLA. These arrangements are handled through representation agreement which currently pays an hourly rate of \$35 and has a cap on the number of hours the private attorney may dedicate to each individual case, as is outlined in a fee schedule.

Sampling of payments to PAI attorneys was conducted. A total of 15 PAI invoices was reviewed, five invoices from each of the years 2006, 2007, and 2008. The 2006 and 2007 PAI invoices were found to be accurate, while three of the five invoices from 2008 contained mathematical errors resulting in one underpayment and two overpayments. The underpayment occurred when an attorney was paid for 6.7 hours at \$35.00 when the actual billed charges were 7.42 hours at \$35.00, resulting in a \$24.00 underpayment. A second invoice to a different attorney overpaid the attorney by \$37.92, and a third invoice to yet another attorney overpaid her by \$7.00. All three of these invoice errors were subsequently fixed by NCLA. Also, the PAI coordinator stated that payment adjustments are planned for all three attorneys during their next billing and payment cycle. With its comments to the Draft Report NCLA was asked to provide an update regarding the payment adjustments. Comments to the DR stated that two of the three

adjustments (one overpayment and one underpayment) have been completed, and that the third adjustment, an overpayment, has not yet been reclaimed as there has not yet been a subsequent billing for that attorney. Comments stated that NCLA is making arrangements with the private attorney for payment or reclamation in a subsequent case billing.

Although none of the above amounts is large, NCLA was requested to take corrective action to ensure that such mistakes in PAI payments do not continue. To address this corrective action item, and other issues noted in PAI oversight, comments to the DR stated that NCLA will be removing some non-PAI responsibilities from the PAI Coordinator so as to allow this individual to have appropriate time to dedicate to her primary role with the PAI program.

PAI Case Oversight

Several older extended service PAI cases were targeted for review to check whether these older PAI cases were active or dormant. In addition, some randomly selected PAI cases also had been open for several years. The review of these older files indicated that NCLA has some older open PAI cases whose status is unclear. Some of these files were unclear as to whether they were still active, while others were likely or clearly dormant and needed to be closed and deselected from CSR reporting. Some of the cases reviewed had a “date of last contact” with the private attorney that was several years ago, and the present status of the case was unknown.⁴⁶ There were two files in which the private attorney did not communicate the case resolution to NCLA in a timely manner, and both of these cases had been properly identified by NCLA as dormant, and were deselected from the CSR.⁴⁷

The above file review indicated the need for NCLA to take corrective action to improve its PAI case oversight process. The PAI case oversight process should involve more frequent contact for open cases and should ensure the more timely closure of extended-service PAI cases.⁴⁸

In contrast to some of the extended PAI cases discussed above, several limited service Plymouth office PAI cases were sampled and all were found to be fully complaint and timely and properly closed at the level of “A” advice and counsel. The Plymouth office coordinates several volunteer

⁴⁶ For example, PAI open Case No. 03-0273 (opened on 1/30/2003) documented that the last contact with the PAI attorney was in February 2004 (at which time the PAI attorney indicated the case was active). Unless NCLA were to receive new information regarding this case indicating that it was still active, or that it was closed no later than 2007, this case will need to be deselected and closed. Likewise, PAI open Case No. 05130000199 (opened on 1/25/2005) documented the last contact with the PAI attorney as occurring in January 2006. PAI open Case No. 041C0000483 (opened on 3/1/2004) evidenced a last contact with the PAI attorney in December 2004 (at which time the case was active). Finally, open PAI Case No. 041C0000204 (opened on 1/27/2004) had a confirmation that the referral was initially accepted by the private attorney in February 2004 with no evidence of subsequent successful contact. The file noted that a message was left for the attorney in May 2005. NCLA was unaware of the current status of the case. It is likely that cases such as these are dormant and will need to be deselected from CSR reporting when closed.

⁴⁷ PAI Case No. 061C0001454, opened on 5/31/2006, evidenced that in 2008 the attorney communicated to NCLA that the case was resolved in 2006. Likewise, PAI Case No. 031C0002675, opened on 9/22/2003, and still open, evidenced that the program was informed recently of a court decision obtained in December 2003.

⁴⁸ It is noted that two older open PAI cases were on the open list due to computer error that occurred at the time of data conversion into Legal Server ACMS, and these cases were properly closed in a prior year, and should again be manually closed back to their original close date. As discussed elsewhere in this report, these computer conversion issues were a one-time occurrence and should not continue.

attorneys who provide telephonic advice to accepted clients. These files were often closed immediately the day of service or within a few days of the case intake and opening.⁴⁹

Comments to the DR stated that NCLA is implementing various and significant changes in PAI case control to improve oversight and ensure timely handling and reporting of case activity. Comments noted that among the changes will be a quarterly review of PAI case activity to avoid the development of dormant cases, and increased follow-up with private attorneys. Comments also noted that in order to maintain a permanent improvement in PAI oversight that it has revised some staffing assignments, and will further revise assignments over time, in order to include additional staff time devoted to PAI from additional staff other than the PAI Coordinator. Currently planned is that the Plymouth office secretary (who was responsible for the fully compliant Plymouth office PAI files) will have her PAI assignments increased so as to assist the PAI Coordinator.

Finding 17: The review of sample time records evidenced compliance with the requirements of 45 CFR Part 1635 – Timekeeping. Program timekeeping is being kept electronically and contemporaneously.

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.

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, and the timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type.

A total of 18 case files (including both staff and PAI cases and cases that were identified for exclusion from the CSR) were reviewed as part of the timekeeping testing. Information in the file was compared against all corresponding timekeeping records in the ACMS and assessment was made as to the accuracy of the time reported when compared to the amount (and dates) of work evidenced in the case files. The review disclosed that the two sets of records compare favorably. References to work made in the file on a date certain would be consistently matched

⁴⁹ For examples *see* PAI Case Nos. 081C0001044 and 081C0000624.

with an appropriate corresponding time entry. Further, the time allotted for the various types of work described was reasonable.

NCLA requires staff to keep time in increments of 0.1 hours (6 minutes) in its case management system while simultaneously keeping track of staff time via a weekly time sheet that is to be completed and signed by each employee before a program administrator reviews the time sheets for accuracy. The time sheets are then presented for signature to the Executive Director, who after signing off on the records, sends the documentation to ADP for processing as the basis of bi-weekly paychecks. Also, sampled staff members interviewed regarding timekeeping were clear as to the expectation and method by which they were to account for their time.

Another test of nine staff member time records (both attorneys and paralegals), for the period ending August 22, 2008, was done to assess staff practices regarding their overall time reporting. The sampled time records evidenced substantial compliance with 45 CFR § 1635.3(b)(c). This review evidenced that timekeeping records are electronically recorded and contemporaneously kept. Further, as required, these records recorded the time spent on each case, matter or supporting activity.

No recommendations or corrective actions are required.

Finding 18: Bank reconciliations for the payroll, operating and client trust accounts are being performed monthly and timely.

A sample of nine bank reconciliations for the operating, client trust, and payroll accounts for June, July, and August 2008 was reviewed. These records evidenced that NCLA is performing these reconciliations both monthly and timely.

In contrast, a low-activity savings account was not being reconciled on a monthly basis. As of October 2008, a proper reconciliation of the program's savings account had not been performed since May 2008. Staff explained that the only activity in this account was the monthly accrual of interest, and that it is not therefore reconciled monthly. Nevertheless, NCLA should also reconcile its saving account along with the other accounts, on a monthly basis.

Finding 19: NCLA is in compliance with 45 CFR § 1627.4(a) that prohibits programs from using LSC funds to pay non-mandatory membership fees or dues to any private or nonprofit organization.

45 CFR § 1627.4(a) requires that:

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

profession, or to the payment of membership fees or dues from non-LSC funds.

A detailed review of the program's comprehensive vendor list for 2007 and 2008 evidenced that no payments to an organization covered by this regulation, were made for membership dues or membership fees. There were several payments noted to such organizations, however these costs involved payment for attendance at conferences and trainings focusing on PAI.

No recommendations or corrective actions are required.

Finding 20: Sampled general expenses and related documentation evidenced substantial compliance with 45 CFR Part 1630 – Cost Standards and Procedures. However, a few late payment fees and related finance charges to the corporate credit card did not meet the LSC cost allowability standards, and must be returned to the LSC account.

The LSC regulations, at 45 CFR § 1630.3(a)(2) regarding *General Criteria*, state that expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was reasonable and necessary for the performance of the grant or contract as approved by the Corporation. A detailed review of NCLA vendor lists was conducted and selected expense documentation was requested and reviewed. This documentation included copies of check requisition forms, general ledger account coding forms and vendor invoices or other supporting documentation. Expense documentation sampled did not evidence any non-compliance with the cost standards of 45 CFR Part 1630.

In May 2007 the program was issued a corporate credit card in the name of the Executive Director. A review of expenses that were paid with the credit card for the period from May 2007 until September 2008 indicated that late payment fees and finance charges were incurred, as indicated in the chart below:

2007	Amount	Description
9/30	39.00	Late payment fee
9/30	4.38	Finance Charge
10/1	10.93	Finance Charge
2008		
1/13	5.71	Finance Charge
TOTAL	\$60.02	

These listed expenses must be viewed in the context of 45 CFR § 1630.3(b) 1. This section describes the standards governing allowability of costs under Corporation grants or contracts. The cost must be "...of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract." Late fees and finance charges do not fit this allowability standard, and therefore NCLA was asked in the DR to credit the LSC fund. The DR had requested that NCLA credit LSC in the amount of \$69.85, leaving open a

question regarding a \$9.83 shipping charge. Comments to the DR stated that NCLA credited the LSC account in this amount as requested.⁵⁰ However, the program provided additional information regarding the charge of \$9.83 necessary for the return of incorrectly ordered law books. LSC concurs with the program's position regarding this amount, and agrees that it may be charged to LSC funds. Therefore the correct amount which needed to be credited to LSC is \$60.02. As NCLA has already made this credit to the LSC account, this issue is resolved.

In addition, the DR required NCLA to take corrective action to improve its credit card payment practices to avoid such charges in the future. Comments to the DR explained that NCLA has taken corrective action, stating that the NCLA Executive Director and its accountant have revised program practices relative to the use, review and payment of credit card payments so as to avoid incurring any late fees or finance charges in the future.

Finding 21: The review of the program's internal controls indicated an inappropriate concentration of responsibilities. In addition, there was noted a lack of ongoing control and proper oversight of the program's Petty Cash Fund.

An internal control worksheet was completed during the review. This worksheet clearly indicated that the PAI coordinator has been charged with too many responsibilities relating to cash receipts, procurement, property, payroll, and client trust accounting.

It was also noted that the high number of fiscal responsibilities assigned to the PAI coordinator has taken valuable time from her PAI duties.

NCLA has outsourced its accounting function to an outside accounting firm. An accountant from this firm handles the NCLA account. As part of their duties, this individual prepares the monthly bank reconciliations, reviews them, and then reconciles them to the General Ledger. Having all three of these duties handled by one individual is not a good business practice. NCLA should redistribute certain financial responsibilities to enhance its internal controls. As part of this, the PAI coordinator should be given sufficient time to ensure smooth running of the PAI effort, which is a primary responsibility.

At the time of the review, the NCLA Executive Director was the custodian of the Petty Cash Fund. As the Executive Director was the person of ultimate responsibility for program funds, he was not following traditional practices relating to the safeguard of these funds. It was explained to the Executive Director that more formal Petty Cash Fund procedures should be adopted including surprise audits of the accounts. In light of these tasks, the Executive Director realized that assignment of the Petty Cash duties to another staff person would be advantageous. NCLA was instructed that the custodian of the Petty Cash Fund should know what is the balance of petty cash at all times – in other words, the combination of receipts and cash should amount to the total dollar amount assigned to that Fund at all times. The program also agreed to adopt a practice of conducting surprise counts of the Petty Cash Fund so as to guard against theft or the taking out of temporary "loans" from the fund.

⁵⁰ Ibid.

In light of the above discussion regarding internal control assignments, the DR requested NCLA to update its accounting procedures and internal control manual to reflect all necessary changes. With its comments to this Draft Report, NCLA was asked to submit a draft of its current or draft new accounting procedures and internal control manual, and should include any other relevant fiscal policy document(s) that detail internal controls. Comments to the DR attached a *Draft Accounting Guide* as requested. Comments also stated that this draft manual contains updated accounting procedures and internal controls procedures that reflect most of the changes under consideration by NCLA.

Comments to the DR stated that NCLA is working with its accountant to devise a revised method for redistribution of financial responsibilities. Comments to the DR added that NCLA has modified its assignment of fiscal responsibilities to the PAI Coordinator, and that the duties of cash receipts, procurement and property records have been removed from that individual. Comments also stated that NCLA is reviewing with its accountant a redistribution of duties performed by the accountant including preparation of monthly back reconciliations, review of reconciliations, and reconciliation to the General Ledger. Also, NCLA has reassigned responsibility for the Petty Cash Fund in New Bedford to the Managing Attorney with more formal Petty Cash Fund procedures implemented and with a more comprehensive review being undertaken by the NCLA accountant as well. NCLA comments also noted that more formal procedures for Petty Cash have been adopted for the Plymouth office, including review by the accountant, with the Plymouth secretary having responsibility for maintaining the Plymouth Petty Cash fund.

Finding 22: Sampled cases and limited review of NCLA accounting and financial records evidenced that NCLA has complied with the attorneys' fees restrictions of 45 CFR Part 1642.

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

None of the sampled files reviewed contained a prayer for attorney fees. Also, a limited review of NCLA fiscal records as well as the 2006 and 2007 AFS evidenced that there were no attorney fees were awarded, collected, or retained by NCLA. Finally, program management and staff interviewed stated that the program is aware of the restriction regarding requesting and collecting attorney fees, and that no such actions have been part of any case to their awareness.

No recommendations or corrective actions are required.

Finding 23: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

None of the sampled files and documents reviewed, including the program's legislative activity reports, evidenced any lobbying or other prohibited activities. Further, program management stated that the program and its staff have not been involved in any activities restricted by Part 1612.

No recommendations or corrective actions are required.

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

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1615 and he stated that there has been no such activity.

No recommendations or corrective actions are required.

Finding 25: Sampled cases 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).⁵¹

None of the sampled files reviewed involved initiation or participation in a class action. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1617 and he stated that there has been no such activity.

No recommendations or corrective actions are required.

Finding 26: Sampled cases 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.

None of the sampled files reviewed revealed participation in litigation related to redistricting. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1632 and he stated that there has been no such activity.

No recommendations or corrective actions are required.

Finding 27: Sampled cases 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.

None of the sampled files reviewed involved defense of any eviction proceeding for a defendant that would be covered by the restrictions of Part 1633. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1633 and he stated that there has been no such activity.

During the observation of sample live telephone intakes, one intake provided additional strong evidence that NCLA staff are aware of the restrictions of 45 CFR Part 1633 and take steps to

⁵¹ 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).

identify whether an eviction case may involve factors pertinent to the regulation, as discussed in the intake section *supra*.⁵²

No recommendations or corrective actions are required.

Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

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

None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1637 and he stated that there has been no such activity.

No recommendations or corrective actions are required.

Finding 29: Sampled cases 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 that prohibited LSC recipients and their staff from engaging a client whom they solicited. *See* Section 504(a)(18). This restriction has been contained in all subsequent appropriations acts.⁵³ This new restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

None of the sampled files, including documentation, such as community education materials and program literature indicated program involvement in the prohibited solicitation of clients. Further, interview of the Executive Director indicated that the program does not solicit clients

⁵² It is noteworthy for Part 1937 compliance that when the NCLA intake worker identified that the applicant's eviction might relate to a recent arrest of the applicant, the NCLA intake worker expanded the intake to include several additional questions unique to the situation. The witnessing of this intake evidenced that this NCLA intake worker was well aware of the restrictions of Part 1633 and that they knew how to obtain additional necessary information relevant for a determination as to whether the case fit the restrictions of Part 1633. Subsequently, the intake worker informed the review team that NCLA had rejected the case.

⁵³ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

and that all clients are accepted through the normal intake screening process, which involves a determination of eligibility and whether a potential case fits within the program's priorities.

No recommendations or corrective actions are required.

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

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

None of the sampled files reviewed involved any of the prohibited activities described in Part 1643. Further, the Executive Director was questioned regarding whether NCLA has had any activity that would be covered under Part 1643 and he stated that there has been no such activity.

No recommendations or corrective actions are required.

Finding 31: Sampled cases 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.

None of the sampled files indicated any casework prohibited by the above LSC statutory prohibitions. Further, the Executive Director stated that NCLA has not conducted any activity as prohibited by Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act.

No recommendations or corrective actions are required.

IV. RECOMMENDATIONS⁵⁴

Consistent with the findings of this report, it is recommended that NCLA:⁵⁵

1. Create a group eligibility screening form that implements the program's policy and which assists staff to properly conduct group intake, should such clients be accepted in the future;

Comments to the DR evidenced that NCLA has adopted a group eligibility screening form to assist staff in the future.

2. As necessary, provide updated training to staff regarding intake screening, ACMS required fields, eligibility guidelines and documentation of the legal assistance provided in case notes or in the ACMS; and

Comments to the DR stated that NCLA has conducted reviews with staff and will conduct further training regarding this recommendation.

3. Create a "deselection" code for non-reportable cases such as a closing code "X" to be used as an additional safeguard to ensure that non-reportable case are in fact deselected.

Comments to the DR stated that NCLA is working with its Legal Files support team to create and implement a deselection code for non-reportable cases.

⁵⁴ 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.

⁵⁵ Comments to the DR confirmed to LSC that NCLA would be adopting all three recommendations contained in the report. Details regarding each recommendation is discussed in this section and through out the report.

V. REQUIRED CORRECTIVE ACTIONS

As a result of this review, and consistent with the findings of this report, NCLA is required to take the following corrective actions:

1. Ensure that staff are correctly and fully entering all correct and necessary data in all required ACMS fields;

Comments to the DR stated that NCLA has completed necessary training under this corrective action item and that it will conduct ongoing regular reviews of data to ensure this corrective action item.

2. Carefully review any currently open cases that were opened prior to the 2007 ACMS data conversion, to ensure that all information necessary for LSC reporting is present. As part of this, review all open cases without recent activity to ensure that they are accurately open and active, and have not been mistakenly “re-opened” by the ACMS conversion process;⁵⁶

Comments to the DR stated that NCLA has completed an initial review of cases that were open prior to the 2007 ACMS data conversion, and that a more complete review of cases is currently ongoing.

3. Revise its draft assets policy to remove the exclusion for “household possessions”;

Comments to the DR evidenced that this item has been completed through the adoption of an updated program policy.

4. Revise its draft assets policy regarding the car exclusion to more precisely reflect the regulatory requirement that excluded cars must be used for transportation;

Comments to the DR evidenced that this item has been completed through the adoption of an updated program policy.

5. Revise its draft intake policy to remove the open-ended statement allowing waiver of normal income or assets screening for a “...similar welfare, or poverty-based program”;

Comments to the DR evidenced that this item has been completed through the adoption of an updated program policy.

6. Ensure that staff consistently evidence in all case files whether there has been in-person client contact such that a citizenship attestation is necessary or whether all contacts, including the intake, have been conducted via phone or letter with no in-person contact. Where a citizenship attestation is required, ensure that this document is obtained;

⁵⁶ If it is found that the computer has incorrectly reopened files that were properly closed in a prior year, the proper handling of such files is to re-close them *back in the year and on the date that the case was previously and properly closed*.

Comments to the DR stated that updated staff training has been provided to staff, and that the program will also conduct ongoing review to address this corrective action item.

7. Ensure that when legal advice has been provided to a client, that the advice is recorded in the client's file;

Comments to the DR stated that an updated review with staff regarding this corrective action item has been conducted and that the program will also conduct ongoing review to address this corrective action item.

8. Ensure that those cases that lack evidence of legal advice are deselected from reporting in the CSR. As part of this effort, NCLA management should adopt enhanced case closing review procedures to ensure proper practices;

Comments to the DR stated that an updated review with staff has been completed and that the program plans to adopt enhanced case closing review procedures that will include a dedicated deselection closing code.

9. Improve its PAI case oversight process to require more frequent contact for open cases and to ensure the timely closure of extended-service PAI cases. As part of this, ensure that the PAI coordinator's other duties are reduced, as necessary, to allow for full discharge of the PAI function;

Comments to the DR stated that this corrective action item has been completed but that additional targeted and ongoing review will be conducted to ensure success of the corrective action. Comments also stated that additional improvements are being considered through potential further reassignment of PAI coordinator duties.

10. Credit the LSC fund for the amount of \$60.02 for certain costs detailed in this report that did not meet the cost allowability standards of 45 CFR Part 1630;

Comments to the DR stated that full corrective action regarding this item was taken, and that the identified costs have been credited to the LSC account.

11. Improve its credit card payment practices so as to avoid future late fees and interest charges;

Comments to the DR stated that steps have already been taken with the NCLA accountant to improve credit card payment practices. Comments also stated that more formal procedures to implement this corrective action will be developed and adopted.

12. Improve its internal control procedures and redistribute certain duties involved with bank reconciliations and the Petty Cash Fund;

Comments to the DR stated that procedures related to this corrective action have already been improved and revised and have included reassignment of Petty Cash Fund responsibilities. Comments also stated that additional review of the internal control procedures are planned with the NCLA accountant.

13. Update its financial accounting procedures and related internal control policies to reflect improved procedures discussed in this report;

Comments to the DR stated that initial steps have already been taken with the NCLA accountant to update financial accounting procedures and related internal control policies. Comments also attached a *Draft Accounting Guide* that provided addition detail regarding new internal control procedures.

14. Ensure that future PAI payments are checked and that PAI attorneys are paid an accurate amount that matches the time billed;

Comments to the DR stated that revisions to the billings and payment procedures have been undertaken so as to properly check the accuracy of PAI payments.

In addition, with its comments to the Draft Report, NCLA was required to provide:

15. A statement updating the current status of all changes made to any intake or case handling policies since the October 2008 review. Also, if further changes are planned, NCLA is requested to provide a description of any additional anticipated changes and the timetable for adoption and implementation of those changes;

Comments to the DR stated that NCLA has revised its intake and case handling procedures as directed in the DR, and that in addition, NCLA has been engaged in substantial planning and development with SCCLS to revise and improve a coordinated regional intake system that was launched on June 1, 2009.⁵⁷ Additional details of the new system were included with program comments, attached as an exhibit to this Final Report.

16. A statement providing the Part 1610 supplemental information requested in that section of the Draft Report, including: the actual practices (and related billing) regarding the sharing of utilities costs by SCCLS and NCLA in the Plymouth office; whether all SCCLS rent payments are up-to-date; and any other useful information that will assist LSC in further understanding this shared office arrangement; and

⁵⁷ In a June 5, 2009 telephone call with the NCLA Executive Director, LSC was informed that this new coordinated intake system was begun on June 1, 2009, as planned.

Comments to the DR provided all of the above requested information as requested. The detail provided was fully integrated in the report section that addressed program integrity under Part 1610.

17. A copy of its accounting procedures and internal control manual and/or related policies.

Comments to the DR attached a *Draft Accounting Guide* as requested.