



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

New Mexico Legal Aid
June 1 - 9, 2009
Case Service Report/Case Management System Review

Recipient No. 732010

I. EXECUTIVE SUMMARY

Finding 1: NMLA's automated case management system ("ACMS") is insufficient to ensure that CSR information is accurately reported and case file information is accurately and timely recorded.

Finding 2: NMLA's intake procedures and case management system do not support the program's compliance related requirements regarding the Board approved government benefit exemption.

Finding 3: NMLA does maintain the income eligibility documentation required by 45 CFR § 1611.6. (Group eligibility)

Finding 4: NMLA does maintain asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

Finding 5: NMLA is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

Finding 7: NMLA 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: NMLA is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1 and CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided).

Finding 10: NMLA's application of the CSR case closure categories is inconsistent with Section VIII, CSR Handbook (2001 Ed.) and Chapters VIII and IX, CSR Handbook (2008 Ed.).

Finding 11: NMLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

Finding 12: Sample 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: NMLA is in 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: NMLA is in substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

Finding 16: NMLA is in non-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

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

Finding 18: NMLA is in compliance with 45 CFR Part 1635 (Timekeeping requirement).

Finding 19: Sampled cases evidenced non-compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

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

Finding 21: 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 22: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

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

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

Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

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

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

Finding 28: 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)).

Finding 29: NMLA performs bank reconciliations monthly and timely.

Finding 30: NMLA's credit card payments are correctly documented and allocated.

II. BACKGROUND OF REVIEW

On June 1–9, 2009, the Legal Services Corporation’s (“LSC”) Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) on-site visit at New Mexico Legal Aid (“NMLA”). The purpose of the visit was to assess the program’s compliance with the LSC Act, regulations, and other applicable laws. The visit was conducted by a team of four LSC attorneys, one attorney consultant, one management analyst, and one LSC fiscal analyst.

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 NMLA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed NMLA 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); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);¹ 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys’ fees); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 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 NMLA’s upper and middle management, staff attorneys and support staff. NMLA’s case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2007 through April 15, 2009. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed 739 case files which included 150 targeted files.

NMLA is a statewide LSC recipient that operates 11 offices. NMLA was formed January 1, 2003 after three former LSC recipients merged. Currently, NMLA receives \$2,653,055 as LSC Basic Field, \$451,172 for Native American and \$84,622 for Migrant funding. OCE last conducted an on-site visit to NMLA on May 10-19, 2004. The OCE Final Report was issued March 16, 2006. Twenty two corrective actions were cited in the Final Report. Due to the lapse of time since the last visit and the changes to the CSR Handbook, regulation 45 CFR Part 1611,

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

and the hiring of new NMLA management and staff, the current visit was conducted as a full CSR/CMS on-site visit rather than a follow-up.² The review evidenced NMLA has made great strides in ensuring compliance regarding intake and case management. As such, many of the corrective actions required were met and improvements could be seen in the most current case files.

NMLA's improvement is due in part because in 2007 NMLA had a management overhaul. On March 19, 2007, a new Executive Director was hired and, in September 2007, a Litigation Director and a PAI Coordinator were hired. With new management in place, NMLA has instituted several policies and procedures to ensure compliance and over 10 new staff members have been hired.³ As such, during the current visit, emphasis was given to 2008 reported files and 2009 open and closed files since many policies and staff changes occurred in 2008.

NMLA's main office is located in Albuquerque, New Mexico. The 10 remaining branch offices are located in Las Cruces, Clovis, Roswell, Gallup, Las Vegas, Bernalillo, Santa Fe, Silver City, Taos, and Socorro, New Mexico. Each of NMLA offices conduct intake but not all participate in PAI activity. Due to the number of offices and the distances between the offices, this visit was conducted over a seven day period.

Since 2003, NMLA has reported on average of 4,645 cases in its CSR data. The highest being 2007 with 5,296 reported cases and the lowest in 2006 with 3,821 cases reported. For 2008, NMLA reported 4,632 closed cases in its CSR data with a 0.9% error rate. According to the Litigation Director the decrease in cases closed last year was due to the fact that NMLA hired several attorneys who were not barred in the state of New Mexico. In New Mexico, employers must give employees time off to study and take the bar. Thus, several staff members were out for several months. The number of cases opened and closed during the absence of the newly hired attorneys decreased, consequently resulting in the decrease of the number of cases reported in the 2008 CSR.

For 2007, NMLA reported 5,296 closed cases in its CSR data. NMLA's 2007 self-inspection report indicated a 3% error rate with exceptions noted in 9 files out of the 231 cases reviewed. The problem areas identified were: non-telephone cases which lacked a citizenship attestation or documentation of alien eligibility (and client not eligible under VAWA 2006 or TVPA-see Program Letters 05-2 or 06-2) and counsel and advice, brief service or referred after legal assessment cases opened prior to 10/01/05 and not falling under the exception in § 3.3(a)(ii) of the 2001 CSR Handbook.

At the time of the visit, one complaint was filed against NMLA. The complaint alleges that NMLA denied service to an applicant unlawfully. A complaint investigation was not apart of the CSR/CMS visit.

² Since LSC's last visit, NMLA has closed offices in Mescalero and Carlsbad and opened an office in Socorro.

³ NMLA management advised that the previous Managing Attorney for the Clovis and Roswell offices had to be removed for personal reasons that were affecting the manager's ability to supervise the offices. Case file review evidenced several issues with staff and PAI during the manager's tenure. A new Managing Attorney was hired in each office and case file review reflected improvement in each office regarding compliance and case management.

By letter dated May 11, 2009, OCE requested that NMLA provide a list of all cases reported to LSC in its 2007 CSR data submission (“closed 2007 cases”), a list of all cases reported in its 2008 CSR data submission (“closed 2008 cases”) a list of all cases closed between January 1, 2009 and April 15, 2009 (“closed 2009 cases”), and a list of all cases which remained open as of April 15, 2009 (“open cases”). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closing category assigned to the case and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by NMLA staff and the other for cases handled through NMLA’s PAI component. NMLA 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. NMLA was requested to promptly notify OCE, in writing, if it believed that providing the requested material, in the specified format, would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases which the team would review during the on-site visit. The sample was created proportionately among 2007, 2008, and 2009 closed and 2009 open cases, as well as a proportionate distribution of cases from NMLA’s office. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closing categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and NMLA agreement signed May 21, 2009, NMLA staff maintained possession of the file and discussed with the team the nature of the client’s legal problem and the nature of the legal assistance rendered. 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.⁴ NMLA’s management and staff cooperated fully in the course of the review process. As discussed more fully below, NMLA 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 Supervising Attorneys in the branch offices and the Executive Director, Litigation Director and PAI Coordinator in the main office.

After the conclusion of the visit, on June 16, 2009, OCE conducted an exit conference via conference call during which NMLA was made aware of the areas in which a pattern of non-compliance was found. Distinctions between 2007, 2008, and 2009 case were found. Significant improvements regarding compliance were evidenced in the 2008 and 2009 case files. However, OCE cited instances of non-compliance in the areas of intake, case management, execution of citizenship attestations, application of closing codes, and PAI timekeeping and oversight. NMLA was advised that they would receive a Draft Report that would include all of OCE’s findings and they would have 30 days to submit comments.

⁴ 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.

NMLA was sent a Draft Report (“DR”) on August 27, 2009 and given an opportunity to comment. NMLA’s comments were received on September 25, 2009. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

Comments to the DR indicated that case numbers were cited incorrectly and that facts presented were incorrect. The noted factual data and case numbers were reviewed and corrected or deleted when applicable. In addition, NMLA indicated in the comments that NMLA took exception to some of the corrective actions listed. The exceptions were taken into consideration, however, after review of the case data and interview notes of OCE staff none of the corrective actions or Findings of the DR were changed.

III. FINDINGS

Finding 1: NMLA's automated case management system ("ACMS") is insufficient to ensure that CSR information is accurately reported and case file information is accurately and timely recorded.

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

The 2006 visit Final Report required NMLA to develop a mechanism to include all non-LSC funded, LSC eligible cases on future CSRs. The procedures were required to be in writing and staff was to be trained regarding new procedures. Also, the 2006 Final Report required NMLA to remove food stamps from its income drop-down box to eliminate any confusion. NMLA was also required to ensure that non-LSC eligible cases are not assigned a LSC funding code and that time expended on non-LSC cases is allocated to the appropriate funding source. In the comments to the 2006 Draft Report, NMLA indicated that the query used for generating CSR data was changed to ensure that all cases funded by any source were included in the count and food stamps was removed from its income form.

NMLA's ACMS was assessed to determine if it met the requirements of the CSR Handbook (2008 Ed.), § 3.1 and other applicable authority. More specifically, NMLA's ACMS was assessed to ensure that there was no eligibility defaults as required by Program Letter 02-06 and that food stamps had been removed from the income drop down box. There were no defaults and the food stamp option has been removed. NMLA utilizes Kemps Prime Sequel Version 8 as its ACMS. The software has sufficient capabilities to generate a variety of reports to meet internal management needs and funding source reporting requirements. NMLA complies with program letter 02-06, which prohibits affirmative data defaults in critical compliance fields.

Based on a comparison of the information yielded by the ACMS to information contained in the case sample and case list, NMLA's ACMS is in non compliance to ensure that information necessary for the effective management of cases is accurately and timely recorded. There were instances of inconsistent information in the ACMS and the case files, inconsistent CSR data, 2007 and 2008 CSR inconsistencies, and closing code inconsistencies. NMLA must ensure that the proper information is entered into the ACMS, that cases appear on the appropriate case lists, and CSR data is preserved for duplication.

Interviews with staff and testing of the ACMS revealed that case handlers are capable of generating open and closed case reports. The Director of Human Resources generates LSC CSRs every year between 20th and 24th of February. The "LSC Eligible" and "Program Eligible" fields on the Eligibility screen of the ACMS are used to select and deselect cases for the CSRs. If a case does not meet LSC requirements because it has a compliance defect or is ineligible pursuant to a non-LSC funding source, the LSC Eligible field is not selected. According to the

Director of Human Resources, the criteria used to create the query for the CSR report includes, staff cases and CSR LSC eligible cases closed January 1st through December 31st of the reporting year.

During the current on-site visit, NMLA was required to recreate its 2007 and 2008 CSRs. NMLA recreated the query used to generate the CSRs but could not recreate the same numeric outcomes reported for the years 2007 and 2008. Prior to the visit, NMLA was required to submit case list for cases reported in 2007 and 2008 and cases open and closed in 2009. According to the 2007 CSRs, NMLA closed 5,296 LSC reportable cases. However, according to the case lists submitted, NMLA closed 5,257 and when asked to run the CSR query on-site the NMLA total was 5,286 reportable cases. For 2008, NMLA reported 4,632 cases. However, according to the case lists submitted, NMLA closed 4,649 cases and the on-site test equaled 4,659 cases. At the time of the visit, NMLA was not sure what caused the discrepancies. While trying to determine the problem, one of the issues raised was that staff may be closing files after the CSR has been submitted. It was suggested that NMLA develop another closing code such as "X" for cases that should be rejected and for cases closed after the CSRs have been reported. This will help NMLA ensure that staff enters all required information accurately and that the information in the case files is consistent with that in the ACMS.

A review of the case lists submitted prior to the OCE visit and case file review disclosed four 2007 branch office case lists that included closing codes that were introduced in 2008. *See* case nos. 06E-1103483, closed as Ib on 12/31/07; 07E-11006451, closed Ib on 12/31/07; 07E-9005289, closed as L on 8/14/2007; and 07E-9005288, closed as L on 12/20/07. At the time of the visit, NMLA could not explain why the new CSR closing codes instituted on January 1, 2008 appeared in the 2007 CSRs. NMLA must ensure that staff is not re-opening files reported, closing codes are applied correctly, and the information in the case file and ACMS are consistent.

Also, there appears to be confusion regarding the reporting of non-LSC funded cases. Interviews with the Executive Director and case file review indicates that some cases that are non-LSC funded but LSC eligible are not being reported in the CSRs. For example, management could not say for sure that the LSC eligible non-LSC funded PAI cases were included in the 2008 CSRs. According to the PAI Coordinator, non-LSC funded PAI cases are included in the CSR. However, it was revealed that not all staff was aware that non-LSC funded cases could still be reported to LSC if the client was eligible. NMLA should remind staff that although a case is not LSC funded; if the case meets LSC's eligibility and documentation requirements, the client's case can be included in the CSRs.

In conclusion, sampled case files reviewed revealed a few instances in which the information in the ACMS did not match the information in NMLA case files. However, no patterns were found. *See* case nos. 08E-130003893 and 08E-13002160.

In its comments to the DR, NMLA stated that after OCE's visit, an investigation was conducted by NMLA's administration and it was learned that the two cases with incorrect closing codes were closed after the upgrade to the ACMS, but back dated to 12/31/07. The cases were closed in the first three months of 2008 and they would have been timely closed had the accurate date of

closing been used. NMLA agreed that back-dating a file closing date is inappropriate, as is opening a closed case and making changes beyond the calendar year it was initially closed. NMLA's staff has been informed of the appropriate way to close cases and have been trained in the proper use of closing codes in an office-wide post compliance visit training event held on June 24, 2009.

NMLA further asserted that prior to the OCE visit, NMLA's CSR was generated using a search performed on the "LSC eligible case" field using the dates 1/2/xx-12/31/xx. Staff had been informed that all cases that were deselected were to have been closed on 1/1/xx. However, new staff had not been trained on this protocol and consequently the case list submitted prior to the visit, incorrectly included non reportable cases. According to NMLA, beginning in 2009 all cases will be closed on the date they were actually, physically closed. NMLA staff has been trained to use the "CSR eligible" check box at case closing and if a case is de-selected it will be giving the closing code "X". To ensure that the future CSR reporting is accurate, NMLA will utilize the Prime ACMS which pulls information from the correct field "CSR Eligible".

Finding 2: NMLA's intake procedures and case management system do not support the program's compliance related requirements regarding the Board approved government benefit exemption.

The 2006 Final Report required NMLA to ensure that all NMLA offices follow NMLA policies and procedures, regardless of preference carried forth from practices in the pre-merged programs. Further, NMLA was directed to utilize standard forms such as retainer agreements, citizenship attestations, eligible alien determination forms, and compliance checklists so that management can be assured that all compliance requirements are met; develop written standardized program intake policies and procedures that include a script of eligibility screening questions; and to conduct training for staff and supervisors regarding program-wide policies, compliance requirements, CSR reporting requirements, and intake procedures and policies.

It is important for all LSC recipient eligibility screeners and intake staff to apply LSC and program compliance requirements correctly and consistently during intake. This ensures that LSC's compliance requirements are met for all applicants and the regulations are applied fairly to all applicants regardless of who performs the screening. Specific OCE team members were responsible for interviewing intake staff, reviewing intake forms, and assessing NMLA's case management system. OCE team members interviewed staff in all of the NMLA's offices (including those individuals who conduct intake for NMLA's special projects) regarding the implementation of NMLA's intake procedures and LSC's requirements. Intake staff were asked to recite screening and intake questions, income and asset policies, and intake procedures and to provide forms used during the screening and intake process. In addition, NMLA's case management system was tested to ensure compliance. A review of NMLA's intake case acceptance and case management practices revealed that, at the time of the OCE visit, client information regarding eligibility was not recorded consistently and accurately as required by 45 CFR Part 1611 and the LSC CSR Handbook (2008 Ed.).

Due the corrective actions listed in the 2006 Final Report, OCE requested NMLA to provide written intake procedures prior to the visit. As requested, NMLA provided written intake procedures for each office. Also, included in the submitted documents were the DV Program Intake/Process Practice Guidelines, which was revised in 2008, and NMLA's asset and income guidelines. NMLA intake is decentralized to field offices. Intake in each office is supervised by a managing attorney however, the Litigation Director is responsible for ensuring that consistent protocols and procedures are used throughout the program. NMLA's offices vary in the location and size however, the screening procedures and compliance forms in all of the offices are for the most part standardized. All offices screen applicants for conflicts, priorities, and 45 CFR 1611 eligibility. The applicant's information is entered into the ACMS. Most outreach intake is conducted by telephone and the information is entered in the ACMS. Once an applicant is deemed eligible, their information is reviewed during weekly case acceptance meetings during which, it is determined whether a file should be referred to a staff attorney, clinic or a PAI attorney. To assist with consistent intake practices and procedures and file maintenance, NMLA's Board passed, in October 2007, a Case Management and Supervision Policy that outlines the protocol that is to be used by all staff. The protocol was effective starting January 1, 2008 and required staff to use the protocol when closing files in 2008.

All of the forms utilized by staff were standardized except for one of NMLA's closing forms. The closing form used is outdated and does not contain the updated closure codes required by the CSR Handbook (2008 Ed.) NMLA must update the form to be complaint with the CSR Handbook (2008 Ed.)

Currently, NMLA's guidelines provide that an applicant whose income is solely derived from government benefits for low-income persons is financially eligible for legal assistance without an independent determination. NMLA's guidelines repeat the language contained in 45 CFR Part 1611. However, the majority of the intake staff interviewed was not familiar with the exemption and did not exercise the option when screening clients. Furthermore, NMLA's guidelines do not state if their Board has approved such exemption nor which government benefits are permissible under the exemption. NMLA's Board must, in accordance with 45 CFR Part 1611, state which government benefits allow for the exemption and certify that they have verified the government benefits selected have the same standards or criteria consistent with NMLA. Subsequently, staff should be trained regarding the policy to ensure that it is implemented properly.

In its comments to the DR, NMLA stated that the closing form cited in this Finding has been discontinued. NMLA also asserted that although NMLA guidelines does not articulate which specific programs are included in the exemption, the Board did approve the exemption. At the time of visit, NMLA could not provide documentation such as Board minutes that stated that the government exemption had been approved. NMLA stated that the Board is reviewing which government benefits to list as eligible to obtain the automatic financial eligibility. This should be fully implemented, with the staff trained, after the December 2009 Board Meeting.

Finding 3: NMLA does not maintain the income eligibility documentation required by 45 CFR § 1611.6 (Group eligibility).

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.⁵ *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 FPG and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b), CSR Handbook (2001 Ed.), ¶ 5.3, and CSR Handbook (2008 Ed.), § 5.3.

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

The 2006 Final Report required NMLA to cease considering food stamps as income for LSC eligibility determinations and to revise its eligibility guidelines. A review of the case sample files revealed no evidence that NMLA is still considering food stamps when determining an applicant's household income.

NMLA revised its Income Eligibility Criteria and Guidelines in May 2006 to implement the changes to 45 CFR Part 1611 which were effective September 7, 2005. In addition the guidelines were revised and adopted by its Board in January 2009. The Board has established NMLA's Maximum Income Level at 125% of the FPG, as updated annually by LSC. The guidelines accurately articulate the regulatory exceptions which allow recipients to qualify individuals whose income is between 125%-200% and the limited circumstances for which it may serve individuals with income over 200%. The guidelines state that if an applicant's income is between 125%-200% and is not seeking legal assistance to obtain government benefits for low-income persons or is not seeking to obtain or maintain government benefits for persons with disabilities, assistance may be provided if one or more of the regulatory factors set forth in 45

⁵ 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.

CFR § 1611.5(a)(4) are present. They further state that the attorney assigned the case is responsible for completing a Income and Asset Waiver form which identifies the over-income factor or whether unusual or extremely meritorious situations are present to justify an asset waiver. The original is sent to the Administrative Office and a copy is maintained in the client's file. Interviews with staff revealed that NMLA's managing attorneys are authorized to approve over-income cases.

Interviews also revealed that staff is well versed on LSC eligibility requirements and the program's financial eligibility guidelines and procedures. Case review evidenced that the Income and Asset Waiver form is used program-wide and intake staff do not utilize a mathematical spend-down to qualify over-income applicants. However, the Waiver form does not list all the exemptions listed in NMLA's guidelines. The form does not include "current taxes" as an exception. While 45 CFR Part 1611 does not require recipients to consider all of the factors when creating/adopting its guidelines, recipients are required to consider all the exemptions listed in its Board approved policy. The NMLA Board adopted policy includes current taxes thus should NMLA's waiver form. The form also lists "Non-existence of excess assets" which is not listed in the guidelines though the guidelines list the catch-all "other significant factors." Therefore, it is recommended that NMLA update its Income and Asset Waiver form so that the factors match the Board's policy.⁶

Although NMLA protocol requires that all files include income and asset waivers when required, a review of case sample files also evidenced a few 2008 and one 2009 file that did not include income documentation or waiver forms for over-income clients. *See* case nos. 08E-1000747, 08E-11003055, 07E-7000932, 07E-1000551, 06E-100006375, and 05E-13004529. These files and others like them are not CSR reportable.

In addition, the 2006 Final Report required NMLA to ensure that court appointed and group cases lacking financial eligibility screening and documentation are not reported to LSC, nor charged to LSC funds. NMLA was required to review all group cases to ensure that ineligible groups are no longer coded to an LSC funding code and to determine if NMLA was to report any such cases; NMLA was to provide LSC a copy of the group form for review. Included in the comments to the Draft Report was a copy of the new Group Eligibility Questionnaire and Statement of Group Eligibility forms. The comments however, did not state whether NMLA had reviewed all group eligibility case files as required.

Since the 2004 on-site review, 45 CFR Part 1611 has been revised and requires more documentation regarding the eligibility of groups and their ability to afford counsel.⁷ 45 CFR § 1611.6 permits a recipient to provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either: (1) The group, or for a non-membership group the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or (2) The group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for

⁶ NMLA's Income Eligibility Criteria and Guidelines include a provision for the screening of a client's income prospects, consistent with 45 CFR § 1611.7(a); however, interviews reveal that such prospects are not screened.

⁷ 45 CFR Part 1611 was revised effective September 7, 2005.

LSC-funded legal assistance and the legal assistance sought relates to such activity. In order to make a determination that a group, corporation, association or other entity is eligible for legal services a recipient shall consider the resources available to the group, such as the group's income and income prospects, assets and obligations and either: (i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or (ii) For a group having as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.

NMLA represents groups of individuals in land and water cases. Intake responsibilities for these group cases are conducted by two attorneys. The attorneys indicated that for extended representation cases the group representative is required to complete two forms an Eligibility Questionnaire for Group Representation, and a Group Statement in Support of Eligibility. For brief service cases, the attorney indicated in the case file noted that the client verified that over half of the members of the group are LSC-eligible and that the group lacks funds to retain an attorney. The attorneys indicated that they make a determination as to whether the group is eligible by considering the socioeconomic characteristics of the persons comprising the group to assure they are consistent with those of persons who are financially eligible for LSC funded legal assistance. The attorney indicated that the determination is based on her familiarity with the different regions of the state where these groups are comprised.

NMLA's current group eligibility questionnaire does not comply with the requirements of 45 CFR § 1611.6. The form fails to obtain information as to whether the group lacks and has no practical means of obtaining funds to retain private counsel. Additionally, NMLA fails to consider the resources available to the group such as the group's income and income prospects, assets and obligation. Although the NMLA staff indicated that they do consider socioeconomic factors, this information is not documented in the case files. Furthermore, the form strictly focuses on groups primarily composed of individuals who would be financially eligible for LSC-funded legal assistance however, it fails to consider collecting any of the required information from groups whose principal activity is the delivery of services to persons in the community who would be financially eligible. Finally when collecting eligibility information from groups, NMLA makes a distinction between extended and non-extended service cases however, there is no such distinction in 45 CFR § 1611.6 or the CSR Handbook (2008 Ed.).

NMLA must change the Eligibility Questionnaire for Group Representation to reflect the requirements of 45 CFR § 1611.6 and ensure that eligibility information is collected for all group cases.⁸ Also, those group cases files that were opened after the revision of 45 CFR Part 1611 (effective date September 7, 2005) must include documentation of screening compliant to 45 CFR §1611.6 or the case file cannot be reported to LSC. In addition, NMLA must ensure that the appropriate staff members are trained regarding the intake of group clients and the requirements of 45 CFR §1611.6.

⁸ NMLA's Litigation Director was forwarded a sample compliant group eligibility form on July 9, 2009.

In its comments to the DR, NMLA stated that the Income and Asset Waiver has been modified to mirror the Income and Asset Policy. The Executive Director and his/her designee may approve the waiver and all managers have been trained on the use of the form. NMLA staff was provided a copy of the modified version and instructed to refrain from using the older versions of the Income and Asset waiver. Also, NMLA stated that NMLA has instituted the Group Form provided by OCE and that all staff has been trained and the form is being implemented for all currently open cases.

In its comments to the DR, NMLA stated that the Water Project does inquire into a group's future ability to obtain funds and does consider the resources available to the group. The group is asked the same eligibility questions, regardless of level of services provided. However, the only individuals required to complete the Group Eligibility form were those who were provided extended service. The Water Unit represents groups-acequias- and as was explained to the OCE, the members of otherwise eligible acequias have socioeconomic characteristics consistent with the other LSC-Funded clients. This fact is generally self-evident given the nature of acequias in New Mexico and thus was not a question repeatedly asked of the acequias that were represented by NMLA. NMLA further stated that the post 2008 group form did capture the required information.

After taking into consideration NMLA comments, the OCE Finding still stands. 45 CFR Part 1611 does not make a distinction between those groups who receive brief service or extended service. Thus, a group eligibility form should be filled out for all groups regardless of the type of service provided. Also, the social economic characteristics considered should be documented in file. Furthermore, as stated in the Finding, the group eligibility form that was presented was not compliant with 45 CFR § 1611.6(b)(1) because it did not document income prospect and social economic characteristics of a group. At the time of the visit NMLA was only considering the social economic characteristics and did not document them in the file. The sample group form sent on July 9, 2009 should assist NMLA in capturing all the requirements of 45 CFR § 1611.6. NMLA group cases that were open after the 2005 revision of 45 CFR Part 1611 must include a completed group form that documents the information required by 45 CFR Part 1611, regardless of whether brief service or extended service has been provided.

In addition, NMLA took exception to the corrective action required regarding this Finding due to the fact that all cases found non-compliant were opened prior to the current administration. NMLA is reminded that the income documentation is a regulatory requirement and that the case files listed are not a complete list of cases found to be non-compliant. Furthermore, as a courtesy to the new administration emphasis was given to 2008 and 2009 case files however, the case sample review did include 2007 reported cases and the issues of non-compliance found in the 2007 case sample were noted, if applicable.

Finding 4: NMLA does maintain asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), CSR Handbook (2001 Ed.), ¶ 5.4, and CSR Handbook (2008 Ed.), § 5.4.

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant's eligibility to receive legal assistance. *See* 45 CFR §

1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.⁹ *See* CSR Handbook (2001 Ed.), ¶ 5.4 and CSR Handbook (2008), § 5.4.

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

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

The corrective actions regarding assets cited in the 2006 Final Report are no longer applicable since the revision of 45 CFR Part 1611 in 2005. The Income Eligibility Criteria and Guidelines approved by the NMLA Board of Directors in January 2009, establishes a liquid asset ceiling of \$8,000 for the first person in a household and \$3,000 for each additional household member. Exempt from consideration is the person's principal residence, vehicles used for transportation, assets used in producing income, and any other asset exempt from attachment under State or Federal Law.

Interviews reveal that staff is well versed on the program asset ceilings and exclusions, except that no interviewee could specifically articulate what, if any, additional assets are exempt from attachment under State or Federal Law. Without this knowledge, it cannot be assured that intake staff is thoroughly screening for asset eligibility in accordance with the Board approved policy. LSC allows the Board to determine its asset ceilings and, with respect to the assets exempt from attachment, which determine which assets are exempt from consideration in determining financial eligibility. Often the list of exempt assets from attachment under State law is lengthy and includes some categories of assets which are limited. In some instances, such limitations could conflict with other assets that are wholly excluded by the Board policy. As such, it is recommended that the Board review the assets exempt from attachment and specifically list in the policy those additional assets that it wishes the program to exclude from consideration when determining eligibility.

All interviewees were well trained on the provisions for acceptance of over-asset clients; they were aware that they must complete an Income and Asset Waiver form.

⁹ 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.

NMLA has improved its the recordation of assets. The case sample review revealed that NMLA 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.) § 5.4.¹⁰ There were several 2007 case file that did not include asset screening, however, there was only one exception noted in 2008 and one in 2009 noted for lack of a waiver. *See* case nos. 081C0000110 and 07E-8005000. These files and others like them are not LSC reportable and should not be charged to LSC funds.

Lastly, interviews and sample case file review evidenced that some staff records the equity of excluded assets in the ACMS while others only record the equity of assets counted toward the program's asset ceiling. NMLA's management confirmed that it is the program policy not to record excluded assets. It is strongly recommended that NMLA ensure that all screeners follow a consistent practice in this regard.

In its comments to the DR, NMLA stated that OCE was provided a revised income waiver form which required the Executive Director's signature. A review of submitted documents revealed that such document was provided thus, the sentence has been removed from the Finding. NMLA further stated that the Income and Asset Waiver has been modified to mirror the income and asset policy. The modified form was distributed to all staff and staff was told to refrain from using any older versions of the Income and Asset Waiver.

Finding 5: NMLA is in non-compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens).

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

¹⁰ 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.

whose child had been battered or subjected to such cruelty.¹¹ 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.

The 2006 Final Report required NMLA to standardize procedures and forms used to document citizenship attestations and alien eligibility. In the comments to the Final Report, NMLA indicated that they had created a Declaration of Citizenship and Eligible Non-Citizen Determination forms. In NMLA's 2007 self-inspection, non-telephone cases were noted which lacked a citizenship attestation or documentation of alien eligibility who were not eligible under VAWA 2006 or TVPA.

A review of the case sample revealed that NMLA has standardized its procedures and forms regarding citizenship attestation and alien eligibility. Applicants are asked to attest to their citizenship status by signing either a printed ACMS intake sheet or a stand-alone form. On the bottom of the printed ACMS intake sheet is a statement, correctly tied to a separate signature line, which states, "I am currently a citizen of the United States of America." There are also two versions of a stand-alone citizenship attestation, one in English and one in Spanish with an English translation; that state, "I declare that I am a citizen of the United States. Non-citizens must present documents which are reviewed by the attorney and recorded on the Eligible Non-Citizen Determination. All Kennedy Amendment cases are referred from domestic violence shelters. The case handler writes "Kennedy Amendment" across the bottom of the Eligible Non-Citizen Determination form and places it in the file.

NMLA is in compliance regarding their forms and procedures relating to 45 CFR Part 1626 however, NMLA is not in compliance regarding the application of 45 CFR Part 1626. Staff and PAI case files were noted for lack of citizenship attestations and documentation verifying the eligibility of the alien seeking representation as required by 45 CFR Part 1626. In some of the offices the error appeared only to occur in 2007, however in some offices, staff is still not compliant regarding the application of 45 CFR Part 1626. *See* case nos. 06E-10003099, 07E-1000241907E-10005208, 07E-12002631, 08E-1001187, 08E-100610, 06E-11004724, 07E-12001023, 09E-11001183, and 08E-10002018.¹² These files and others like them are not LSC reportable. NMLA's case management protocol instructs staff to include a sign statement of citizenship, unless the file is closed for Advice or Brief Service. It is recommended that NMLA

¹¹ *See* Kennedy Amendment at 45 CFR § 1626.4.

¹² Several PAI files lacked a citizenship attestations contrary to 45 CFR § 1626.6. The exceptions were all contract PAI cases, spanning all years of the review period. This deficiency is based in the offices' practices of relying upon the private attorneys to obtain citizenship attestations or verify eligible alien documentation and having the PAI Coordinator close the file. The success rate of this practice depends on the diligence of the individual private attorneys and the oversight of the PAI Coordinator. In most instances, the private attorney did not obtain a citizenship attestation. This will be discussed further in Finding 16.

revise the case management protocol to remind staff that a citizenship attestation is needed when a client is seen in person regardless if the file is closed as Advice or Brief Service.

Also, it was not clear when reviewing some case files as to whether a client had sent documentation via mail or come into the office thus, requiring verification of citizenship status.. See, case no. 08E-13004237. It is recommended that NMLA staff document in file clearly whether a client has come to the office or whether documents are sent by mail or fax.

In addition, NMLA has a grant to provide legal assistance as a *Guardian Ad Litem* (“GAL”) to minor children in certain cases. A review of the GAL cases revealed that in each case, the attorney was appointed by the court to provide assistance and in each case the attorney certified, as *Guardian Ad Litem*, that the clients were citizens and eligible for legal assistance. See case nos. 08E-9004089, 07E-9005288, and 07E-9005289.

The LSC regulations do not permit LSC recipients to attest to the citizenship of their clients, even if they are providing representation as GAL. Pursuant to 45 CFR § 1626.6(a) all applicants are required to execute an attestation of citizenship form. 45 CFR § 16126.6(b) states that a recipient may accept originals, certified copies or photocopies of US passports, birth certificated, naturalization certificate, US citizenship identification card and a baptismal certificate administered within two months after birth. Recipients may also accept any other authoritative document such as a document issued by INS, by a court, or by another agency that provides evidence of citizenship. If the above is not available, the recipient may accept a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party’s own US citizenship, that the person seeking legal assistance is a US citizen.

NMLA must cease allowing appointed staff attorneys to certify that GAL clients are US citizen. Accordingly, it is recommended that NMLA seek the assistance of the appointing court official to modify the order of appointment to describe the minor child as “a citizen of the United States” which will be sufficient attestation for purposes of 45 CFR § 1626.6(b). Finally, NMLA is advised to read LSC’s Office of Legal Affairs External Opinion # 2008-1003 which also speaks to this issue.

In response to the DR, NMLA stated that it takes exception to this Finding. NMLA stated that there is no pattern of non-compliance since the non-compliant files were staffed by advocates who are no longer with the program and majority of files cited were PAI. NMLA is advised that all cases, whether staff or PAI, if reported to LSC are included in determining whether a recipient is compliant. Again, NMLA is reminded that the cases listed are not the full sample of cases cited for non-compliance only a representative sample. Since several files both staff and PAI files were found without citizenship attestations the Findings stands as documented in the DR.

Also, NMLA stated, in its comments to the DR, that NMLA no longer has a contract with the state of New Mexico thus, the citizenship status of GAL clients are no longer an issue.

Finding 6: NMLA 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.¹³ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

A uniform retainer agreement is used by NMLA. The retainer is in duplicate; the client receives the white copy and the yellow copy is placed in the client file. Although retainer agreements are no longer required by LSC for PAI cases, NMLA has decided to continue to obtain them. In addition, contract attorneys obtain a second retainer agreement, executed between themselves and the clients.

The sample case files reviewed revealed that NMLA is in substantial compliance with the requirements of 45 CFR § 1611.9. However, case files closed in 2008 and 2009 were noted both for missing retainers and for retainers missing a description of the scope of legal assistance to be provided. *See* case nos. 08E-1001979, 08E-11006280, 07E-1005802, 04E-8012724, 09E-9001398, and 08E-9005030.

NMLA must ensure that retainers, which include a description of the legal assistance that is to be provided, are executed for all cases that are closed with closing codes F – L.

In its comments to the DR, NMLA stated that it takes exception to the corrective actions related to this Finding due to the location and number of files cited. NMLA also stated that it takes exception to the case files listed as non-compliance.

OCE reviewed its notes regarding the cited files and found that in: case file 08E-1001979 the advocate executed one retainer for both this file and another file thus, the retainer is non-complaint, a separate retainer must be executed for each file; and case file 08E-11006280, the case notes cite that the advocate entered appearance in the case, thus, a retainer should have been executed. However, the file was closed as B because no retainer was obtained. The other case files listed either did not have a retainer at the time of the visit or the scope of the retainer was blank. As such, the Finding of substantial compliance and the corrective actions required remain.

¹³ 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.

Finding 7: NMLA 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).

The sample case files reviewed demonstrated that NMLA is in compliance with the requirements of 45 CFR Part 1636. There were only two instances in which a verified complaint or statement of fact was not executed when required. *See* case nos. 08E-11001079 and 08E-13003056.

There are no recommendations or corrective actions 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 which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

According to NMLA management, in 2008 a needs survey was conducted to assist in the drafting of priorities. Prior to the visit, NMLA provided LSC with a list of its priorities. The document provided stated that on March 1, 2008, NMLA Board adopted the following priorities:

1. To secure or preserve necessities of life.
2. Adequate and accessible housing and utilities without discrimination.
3. Adequate available food and water.
4. Economic Security, especially for those eligible for public benefits.
5. Fair Pay and decent working conditions for low income workers.
6. Medical Care, especially for those eligible for public medical assistance.
7. Safe, stable families.
8. Assistance with Consumer issues.
9. Specialized issues such as:

Native American issues; Legal Assistance to Migrant families, Land and water issues confronting acquaint and land grant associations, Community economic development assistance, Simple wills and uncontested probate

issues where private bar representation is limited, living wage issues and, Assistance with other significant legal issues arising due to new or unforeseen circumstances.

10. Cases accepted to satisfy grant or contractual agreements.

NMLA is in compliance with 45 CFR Part 1620. None of the 2008 and 2009 sampled files reviewed evidenced cases that were outside of NMLA's priorities. Two cases were noted in the 2007 sample. Each was a rejected case that should have not been included in the 2007 CSRs. *See* case nos. 07E-4002035 and 07E-1006615.

There are no recommendations or corrective actions required.

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

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

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

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

In the comments to the 2006 Draft Report, NMLA indicated that staff had undergone closing code training at the June 24, 2005 staff meeting.

The 2006 Final Report required NMLA to provide all staff with additional training regarding the need for appropriate documentation of legal advice required for CSR purposes and as it applies to the application of closing codes. Management was asked to review all closed files to ensure that closing codes are being applied correctly—specifically closing codes E and K.

During the current on-site visit, the sample case files reviewed evidenced that NMLA is in substantial compliance with CSR Handbook (2001 Ed.), ¶ 5.1(c) and CSR Handbook (2008 Ed.), § 5.6 as there were only two 2008 and one 2009 closed case files reviewed which contained no

description of the legal assistance provided. *See* case nos. 08E-13005172, 07E-10003080, and 07E-10002419. These cases and other like them are not CSR reportable.

In addition, several PAI files were noted for lack of documentation of legal advice but will be discussed in Finding 16

There are no recommendations or corrective actions required for staff files.

Finding 10: NMLA's application of the CSR case closure categories is inconsistent 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 2006 Final Report required NMLA to review closed files to ensure that closing codes were applied correctly. In the comments to the Draft Report, NMLA stated that staff had received training regarding the application of closing codes at the June 24, 2005 staff meeting.

The ACMS includes the case closure categories revised by the CSR Handbook (2008 Ed.). However, as stated in Finding 2, one of NMLA's branch office closing forms is outdated and contains defunct closing codes. Although staff stated that they have been fully trained and are aware that the C, D, E and J codes are no longer in use, it is recommended that NMLA update this form to reflect the current LSC closing codes.

Also, the case sample review evidenced that the 2007 CSRs included several files with incorrect closing codes. *See* case nos. 06E-1001106, 07E-7000126 07E-13002455, 07E-80003846 and 07E-13002913. Although improvement was made regarding the 2008 CSRs and with 2009 closed files, staff still is not applying closing codes consistent with the CSR Handbook (2008 Ed.). Numerous case files were noted for incorrect closing codes. *See* case nos. 07E-4002831, 08E-15002008, 08E-1003179, 08E-11005254, 08E-1103534, 08E-13001399, 07E-5005675, 06E-1007804, 07E-10004877, 07E-4005094, and 09E-13000318. NMLA must ensure that staff applies closing codes as instructed by the CSR Handbook (2008, Ed.)

It is highly recommended that staff receive additional training regarding the application of closing codes.

In its comments to the DR, NMLA stated that the closing form mentioned above has been discontinued. NMLA's staff has been trained that the only way to properly close a file is in the ACMS within a timely fashion using the current closing codes listed in the CSR Handbook (2008 Ed.). Staff believed that "litigation" meant a contested court hearing or appearance in court. Many of the divorce files were closed under incorrect codes due to this misconception. NMLA's staff has been instructed that in any case where a pleading has been filed the closing

code must include the term “litigation” whether or not you appeared in court according to NMLA.

Finding 11: NMLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3.

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).¹⁴ There is, however, an exception for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), § 3.3(a). All other cases (CSR Categories D through K, 2001 CSR Handbook and F through L, 2008 CSR Handbook) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b) and CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The 2006 Final Report required NMLA to train staff on the parameters necessary for timely case closing; implement a case review system which will keep cases from becoming dormant as a result of advocated leaving NMLA employment, and review all open case files to ensure that files are not allowed to languish with no oversight or activity.

In the comments to the Draft Report, NMLA indicated that necessary training had been accomplished. Additionally, NMLA indicated that managers are now conducting quarterly review of all cases to ensure proper closing codes are being used.

NMLA’s case closure protocol requires that once work is completed, a case file should be closed within 30 days and that the file should be closed in the year the work is completed or in the following year if opened within the last three months of the year. A review of the case sample evidenced that NMLA is in compliance regarding the requirements of CSR Handbook (2001 Ed.), ¶ 3.3 and CSR Handbook (2008 Ed.), § 3.3(a) as only a few files were found not to be timely closed or dormant. *See* case nos. 07E-10003080, 07E-5003474, and 08E-13001954.

These files and others like them are not CSR reportable.

¹⁴ 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).

Finding 12: Sample 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.

The 2006 Final Report required NMLA to review all closed cases and reject duplicates in Kemps to ensure exclusion of duplicates in future CSR data. In its comments to the Draft Report, NMLA disagreed with this corrective action.

Case sample evidenced that NMLA is in compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 and CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases. The team leader targeted files for possible duplication. Of the targeted files, two sets of duplicates were found in the 2008 case sample. *See* case nos. 08E-11002135 with duplicate 08E-11002046 and 08E-13002737 with duplicate 08E-13002635.

There are no recommendations or corrective actions required.

Finding 13: NMLA is in compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).

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

A limited review of accounting records and documentation for the period January 1, 2007 - April 15, 2009 as well as interviews with management disclosed that NMLA does not appear to have

expended any grant funds, or used personnel or equipment in prohibited political activities in violation of 45 CFR Section 1608.3(b), therefore, NMLA is in compliance.

There are no recommendations or corrective actions 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).

NMLA is in compliance with 45 CFR § 1609.4, which requires that each recipient shall adopt written policies and procedures to guide its staff in complying with 45 CFR Part 1609 and shall maintain records sufficient to document the recipient's compliance with this part. None of the sampled files reviewed involved legal assistance with respect to a fee-generating case.

Discussions with the Executive Director also confirmed that NMLA is not involved in any fee-generating case.

There are no recommendations or corrective actions required.

Finding 15: NMLA is in substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity).

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

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

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

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

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

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

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

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

The 2006 Final Report required NMLA to notify non-LSC funding sources and contributors of the application of LSC restrictions on funds donated to the program. In the comments to the

Draft Report, NMLA stated that the required letter is now sent out as soon as NMLA receives a grant notification.

From a limited review of the general ledger, cash receipts, and cash disbursements for the period January 1, 2007-April 15, 2009, observations of the physical location of the office by OCE team members, and interviews with staff and management, NMLA does not appear to be engaged in any restricted activity which would present 45 CFR § 1610.8(a) compliance issues. However, NMLA is not complaint with 45 CFR § 1610.5(a) which states that "... no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds." Although, NMLA does have a notification letter, it did not send it to all the required donors.

Upon request, the Chief Financial Officer generated a list of all donations of at least \$250 or greater for the years 2007, 2008, and 2009. In the review of the list, particular emphasis was given to donations by the Equal Access to Justice which totaled \$85,680 in 2007 and \$104,716 in 2008. No figures were available for 2009 at the time of this review. In discussions with the Executive Director and Chief Financial Officer it became apparent that the Equal Access to Justice initiative has in 2007 and 2008 made a lump-sum payment without providing any detail on who the donors were or how much money they had given. For greater transparency and to satisfy the requirements of 45 CFR § 1610.5(a) it was agreed upon that moving forward the program will now ask for more detail about the individual donors and the dollar amounts they pledged and/or paid, so that those who gave \$250 or more can receive a notification letter from the program informing the donor of the prohibitions and conditions which will apply to the donation.

In its comments to the DR, NMLA stated that the Executive Director has forwarded donation letters to all participants in the Equal Access to Justice and United Way campaigns where the donation to NMLA were over \$250.

Finding 16: NMLA is in non-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.

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

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors.

See 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. See 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

The 2006 Final Report had many corrective actions regarding PAI. The corrective actions required NMLA to: cease closing cases referred to other agencies as PAI cases; ensure that PAI attorneys are not given the responsibility of applying closing codes unless they have received proper training on LSC requirements; cease pre-paying PAI attorneys and ensure that all required documents are returned, and; monitor its PAI activities and expenditures throughout the year in order to determine whether the minimum expenditures will be met.

As part of the assessment of NMLA's PAI activity, NMLA's Comptroller, the PAI Coordinator, and the managing attorney were interviewed, and a review of the NMLA's PAI plan and sample PAI case file review was conducted. Areas of non-compliance were identified in screening, documentation of legal assistance, oversight, and timekeeping.

The 2006 Final Report also required NMLA to develop a cost allocation policy and procedure statement. In its comments to the Draft Report, NMLA stated that one was in place.

Since the 2006 visit, NMLA has changed its PAI structure. NMLA hired a PAI Coordinator in 2007. According to NMLA's management, NMLA has focused on training staff regarding PAI referrals, timekeeping, and case management requirements. The Las Cruces contract PAI program that was in existence in 2006 has been phased out. Now there is an emphasis to create PAI programs throughout the service area. The majority of NMLA's PAI cases are contract cases however, NMLA is now focusing on pro-bono PAI.

In 2007, NMLA's request for a PAI waiver was granted. In 2008, NMLA met its 12.5% requirement and did not request a PAI waiver. NMLA's Audited Financial Statements as of December 31, 2008 disclose that in 2008 the program expended \$439,090 on PAI activities.¹⁵ Included in this amount was \$64,519 in the unmet PAI requirement for fiscal year 2007 bringing the net PAI expenditures in FY 2008 to \$374,571 or 14.12%.

A review of the NMLA PAI plan indicates that it meets all the requirements of 45 CFR § 1614.4(b). According to NMLA's 2009 PAI Plan, New Mexico's Supreme Court directed the state's Access to Justice Commission to craft a state plan for civil legal assistance for low-income populations in 2007. As a result, local pro-bono committees were established in each of the state's 13 judicial districts. Each committee established its own guidelines and criteria. In response to the State's initiative, NMLA's PAI plan is designed to support 11 separate PAI initiatives: pro se divorce clinic, pro bono panel, intake assistance project, pro bono co-

¹⁵ Interviews with the Executive Director and Litigation Director revealed that in 2007 and 2008, contract attorneys were used in the Las Cruces office and the Roswell office to assist in closing staff files of former employees. This resulted in a larger amount of PAI cases being closed and reported.

counseling project, children's SSI project, food stamp and medical assistance advocacy pro bono project, pro bono legal consultant project, law firm pro bono project, VAWA project, U & T Visa project, and senior attorneys pro bono project, all in an effort to meet the 12.5% PAI requirement. According to NMLA management, the program is working with judicial districts to develop pro bono activities throughout the State. Districts are at varying stages in the development of plans and attorney recruitment, depending upon politics and local circumstances. The PAI Coordinator has visited each of the districts to determine how NMLA can coordinate its efforts with the State's efforts. As a result, NMLA branch offices have referred a pro bono case to test referral, oversight and closing procedures.

The majority of NMLA's contract cases are funded by the New Mexico Children, Youth and Family Department for domestic violence work. These applicants are referred to NMLA through domestic violence partner agencies. NMLA is contracted to provide representation to domestic violence victims regarding family matter issues. Most of the cases involve protective orders, divorce, and custody complaints. NMLA's Grant Director oversees the grant. According to the Grant Director, NMLA receives a referral from the agency. The referral is sent to the NMLA office closest to the client. A local attorney is found and letters are sent to the client and the PAI attorney. When the attorney is finished with the case, the closing information and billing information is sent to the Grants Director who submits the billing to NMLA's Chief Financial Officer.

All other PAI clients are obtained thru the NMLA intake system. Intake for all PAI files happens locally in each NMLA office. PAI clients are screened and, if found eligible, their case is discussed at weekly staff meetings to determine if they should be referred to a PAI attorney. Local staff members seek out local counsel to handle cases. Once an attorney is found a conflict check with the attorney is conducted and if there are no conflicts, a letter is sent to the client advising them that their case has been referred and providing the client with the attorney's name. After the case is referred the local offices have no further interaction with the client or the attorney. The PAI Coordinator who is based in the main office is responsible for case oversight, closure, and payment approval. According to the PAI Coordinator, oversight is conducted every three months.

As a result of NMLA's current system, PAI practices are not standardized and contract and file information is kept in different offices throughout the program. Consequently, in some instances, LSC reviewers were not able to ascertain if eligibility information had been obtained properly or if oversight had been conducted.

A review of PAI case files evidenced NMLA refers PAI clients without first obtaining a citizenship attestation or verification of alien eligibility. In most instances, once the file is referred, neither the PAI attorneys nor the PAI Coordinator obtains a citizenship attestation or alien eligibility information. As result, a large percentage of PAI files were found to be non-compliant and non-reportable. *See* case nos. 07E-12002631, 07E-12001023, 07E-12003123, 08E-7005823, 08E-130005860, 07E-13002199, 07E-13002534, and 08E-13002160.

NMLA also conducts a family pro-se clinic in which applicants are assisted in filling out pro-se documents. NMLA staff and volunteer attorneys and non-attorneys assist the clients. NMLA staff reviews the information that is given to the clients by the volunteers. All cases are closed as

B (limited action). According to staff, all of the clinic cases are closed as staff cases and the time is allocated as staff. However, a review of files revealed that some clinic cases were closed as staff and some were closed as PAI. *See* case nos. 08E-1102014 and 08E-11004689.

NMLA was advised that for instances in which a clinic participant is assisted by a private attorney, those cases files should be closed as a PAI. If a staff advocate provides additional assistance to the client after the clinic, then the case file should be closed as staff instead. In addition, those cases in which a staff advocate assists a client during the clinic, the case file should be closed as a staff case. The time spent by NMLA staff reviewing the cases handled by PAI attorneys should be allocated to PAI. However, the time spent by staff providing advice during the clinic should not be allocated to PAI.

A review of PAI timekeeping records and procedures was performed in addition to case file review. The timekeeping records for attorneys and paralegals reviewed frequently lacked any descriptive detail. As presented, many PAI time charges had descriptions that did not make clear the relevance to PAI activities and instead of linking time charges to a specific case (i.e. case number or name) the identifier simply said "case related." As a result, the entered PAI time substantially lacks proper support and the PAI allocation of this time is in question. *See* 45 CFR § 1614.3(e)(1)(i). NMLA must include in the ACMS notes that document why the time spent can be attributed to PAI.

In response to the 2004 visit, the Chief Financial Officer created a cost allocation policy and procedure statement. The Excel spreadsheet is used to export all PAI time (direct and indirect) for a computation of total time expended on PAI activities. The total of this spreadsheet ties to the PAI amount disclosed in the program's Audited Financial Statement for 2008. A review of the spreadsheet found that 75% of an administrative staff person's salary is counted towards the PAI effort when in reality the duties are predominantly administrative. Effectively this means that the program overstated its PAI activities in 2008. Therefore, NMLA must revise the administrative staff person's time sheet to accurately reflect the amount of the staff person's salary that should be allocated to PAI. This will require NMLA to review the staff person's duties with the program.

In addition to timesheets, private attorney contracts and invoices were reviewed. Five contracts with private attorneys were simultaneously reviewed with invoices that had been submitted by various private attorneys over the duration of the review period. The review evidenced that the majority of invoices reviewed were not supported by an active contract. In the absence of a valid active contract, several of the invoices reviewed paid the attorney, in addition to the professional fee, 6.6875% of state tax. NMLA must ensure that private attorneys are not paid unless an active contract has been executed.

NMLA was advised that corrective action is needed regarding the case management of PAI files. If NMLA wishes to report a PAI case file to LSC it must first ensure that it includes eligibility information, including a citizenship attestation; oversight conducted regarding the file must be documented in the file or in the ACMS system (including copies of court docket information); documentation of legal advice from the attorney must be included in the file, this includes a closing form or court pleadings and orders; contract attorneys must not be paid compensation

unless their invoice includes support documentation; and contract attorneys must submit court orders and or pleadings when they have entered an appearance and represented a client.

It is highly recommended that PAI cases are not referred unless a citizenship attestation has been obtained. NMLA must determine whether to keep the files with the PAI Coordinator in the main office or maintain local contact by keeping the files in the branch offices which would require local staff to conduct oversight and close files. It is recommended that PAI files be placed in one central location (at the main office) with all the above information included.

Lastly, NMLA must ensure that staff is correctly documenting PAI time in accordance with 45 CFR Part 1614. Staff must state why time is allocated to PAI and ensure that only staff that is participating in PAI activities is allocating their time to PAI. As such, it is recommended that NMLA change from having staff use case activity codes to using actual case numbers when documenting time. According to staff, NMLA held a statewide training for all advocates on June 22, 2009 regarding standardized coding. Although staff has had training regarding the codes, a review of time charges revealed that there is confusion among staff and the Chief Financial Officer regarding the time codes.

In its comments to the DR, NMLA stated that new procedures have been instituted since OCE's visit. When a case is referred out, all PAI attorneys are being provided a letter which set forth their responsibilities, including providing pleadings and/or a documentation of legal work performed; whether they are contract or non-contract PAI attorneys. Local offices have been asked to assist in monitoring the closing documentation and to obtain the documents when necessary. Also, all staff was trained on protocol for referral/cooperation with PAI attorneys on June 24, 2009. NMLA now has a protocol in place in each office for the handling and assignment of PAI cases. Given the various pro bono/PAI structures in place across the state, it has been time consuming, but NMLA has worked with each judicial district and provided training to both the pro-bono committees and local bar in what is required of a PAI attorney and what documentation will be necessary to close a file. To ensure compliance, the PAI Coordinator is responsible for the oversight and follow-up on all PAI cases. It is however, the field office manager who must monitor LSC compliance in the individual files.

In addition, NMLA stated that the protocol requires the PAI attorney to submit both a bill and the proper case closing documentation before their invoice will be paid by NMLA. NMLA asserted that all PAI contracts have been reviewed and all currently active contract PAI attorneys have current contracts on file. NMLA's CFO has directed the fiscal staff no to pay any PAI attorney unless there is an active contract on file. NMLA also asserted that NMLA staff has been trained on timekeeping and notes for timekeeping for both PAI and non-PAI time in the past nine months.

NMLA took exception to the Finding of non-compliance regarding timekeeping. NMLA asserted that the non-compliance was only found in one office out of eleven and the mistake might have resulted in under reporting. OCE has reviewed NMLA's argument and taken it into consideration. Due to the fact that a recipient's branch offices are not reviewed as separate entities, the Finding in the DR remains. NMLA staff was incorrectly reporting staff cases as PAI cases, so it was over reporting its staff cases and maybe under reporting its PAI cases. NMLA's

argument that it was one office out of eleven is not relevant. NMLA is reminded that NMLA is reviewed as one law office, which means that if a pattern of non-compliance is found in one NMLA's branch office then NMLA as one law office is non-complaint. LSC does not single out offices in its reports or take in consideration how many offices a recipient has when making a determination of compliance.

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

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

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

The review of accounting records, the detailed general ledger for the full calendar years 2007 and 2008, and through April 15, 2009, as well as the vendor detail for NLADA disclosed that, in six of eight instances reviewed, NMLA paid with non-LSC funds for non-mandatory membership fees or dues to a private or non-profit organization (NLADA) and in two instances membership dues and subscription fees to NLADA were paid with LSC funds. The first instance occurred on March 19, 2007, when the individual membership dues for the Executive Director were paid with LSC funds. On January 3, 2008, NLADA membership dues and subscription fees in the amount of \$8,600 were paid. These payments are unauthorized expenditures prohibited by 45 CFR Part 1627.

NMLA was advised that they must reimburse the LSC account \$8,600.00 for unauthorized expenditures prohibited by 45 CFR § 1627.4(a). NMLA is requested to certify, with its comments to this Draft Report, that the LSC account has been credited with \$8,600.00 using non-LSC funds.

In its comments to the DR, NMLA stated only that this corrective action has been completed. It did not certify with its comments, as requested in the DR, as to when this corrective action was completed.

Finding 18: NMLA is in compliance with 45 CFR Part 1635 (Timekeeping requirements).

The timekeeping requirement, 45 CFR Part 1635, is intended to improve accountability for the use of all funds of a recipient by assuring that allocations of expenditures of LSC funds pursuant

to 45 CFR Part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended; enhancing the ability of the recipient to determine the cost of specific functions; and increasing the information available to LSC for assuring recipient compliance with Federal 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. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

According to NMLA's Director of Human Resources, "none of NMLA part-time staff has a second job or they are precluded (attorneys) from accepting a second job per their employment contract."

NMLA case management protocol requires that time keeping records be kept contemporaneously in Prime. A review of 5 advocates' timekeeping records for the period June 23, 2007 until March 13, 2009 disclosed that the records are electronically recorded, and contemporaneously kept, recording the time spent on each case, matter or supporting activity, and thereby in compliance with 45 CFR § 1635.3(b)(c)

There are no recommendations or corrective actions required.

Finding 19: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).

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

A limited review of NMLA's fiscal records and the 2007 Audited Financial Statement, as well as interviews with management, evidenced that there were no attorneys' fees requested or collected by NMLA.

None of the sampled staff case files reviewed contained a prayer for attorneys' fees. However, during an interview with the PAI Coordinator, it was revealed that one of the contract PAI attorneys is requesting attorney fees in their clients' pleadings. The PAI Coordinator discussed the matter with OCE and subsequently drafted a letter to the attorney advising that per LSC requirements, they are not allowed to request attorneys' fees.

Finding 20: Sampled cases 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. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 21: 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. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 22: 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).¹⁶

NMLA is in compliance with 45 CFR Part 1617. None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 23: 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. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 24: 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.

¹⁶ 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).

None of the sampled files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 25: 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. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

Finding 26: 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 which prohibited LSC recipients and their staff from engaging a client which it solicited.¹⁷ This restriction has been contained in all subsequent appropriations acts.¹⁸ 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 such activity. Discussions with the Executive Director also confirmed that NMLA is not involved in this prohibited activity.

There are no recommendations or corrective actions required.

¹⁷ *See* Section 504(a)(18).

¹⁸ *See* Pub. L. 108-7, 117 Stat. 11 (2003) (FY 2003), Pub. L. 108-199, 118 Stat. 3 (2004) (FY 2004), Pub. L. 108-447, 118 Stat. 2809 (2005) (FY 2005), and Pub. L. 109-108, 119 Stat. 2290 (2006) (FY 2006).

Finding 27: 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 such activity. Discussions with the Executive Director also confirmed that NMLA is not involved in these prohibited activities.

There are no recommendations or corrective actions required.

Finding 28: 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.

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Interviews conducted further evidenced and confirmed that NMLA was not engaged in any litigation which would be in violation of 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.

There are no recommendations or corrective actions required.

Finding 29: NMLA performs bank reconciliations monthly and timely as required.

The monthly and timely reconciliation of bank accounts represents a fundamental control, as stipulated in the Accounting Guide for LSC recipients and failure to follow it may be interpreted as negligence, especially, when full segregation of duties cannot be ensured.

Bank reconciliations for the operating, payroll, and money market accounts were reviewed for the months of February, March, and April 2009 and were found to be performed timely and accurately

There are no recommendations or corrective actions required.

Finding 30: NMLA's credit card payments are correctly documented and allocated.

A random sampling of 37 credit card charges that were incurred in 2007, 2008, and the early part of 2009 was reviewed. All of the charges were properly documented with original receipts attached and also coded to the appropriate funding source.

There are no recommendations or corrective actions required.

IV. RECOMMENDATIONS¹⁹

1. Require advocates to indicate in the case notes whether documents are received from the client in person or through the mail;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

2. Revise the case management protocol to remind staff that a citizenship attestation is needed when a client is seen in person regardless of the case file is closed as Advice or Brief Service;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

3. Enter the name of the PAI attorney in the attorney's field in the ACMS;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

4. Create a code, such as "X" for rejected and/or non-reportable cases;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

5. Document which assets are exempt from attachment under State and Federal Law and specifically list in the Eligibility Guidelines those additional assets that the program wishes to exclude when determining eligibility;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

6. Remind staff that excluded assets are not to be recorded;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

¹⁹ 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.

7. Maintain one case file (that has all required information in the file) for PAI clients, either in branch office or in the main office;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

8. Ask that court officials modify appointments of GAL to include a statement that the minor child is a US citizen;

In its comments to the DR, NMLA stated that this is no longer an issue for NMLA because NMLA is no longer accepting court appointments in GAL cases

9. Review LSC's Office of Legal Affairs External Opinion #2008-1003;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

10. Require that a citizenship attestation is first obtained before PAI referrals are made;

In its comments to the DR, NMLA stated that this recommendation has been implemented.

11. Allow staff to change from using activity codes to actual case numbers when documenting time; and

In its comments to the DR, NMLA stated that this recommendation has been implemented.

12. Remind staff that non-LSC funded cases that are LSC eligible can be reported to LSC.

In its comments to the DR, NMLA stated that this recommendation has been implemented.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that the automated case management system is sufficient to record accurate and timely information regarding the case files, this includes resolving why the new CSR Handbook (2008 Ed.) closing codes were applied to closed 2007 case files;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Finding 1.*

2. Ensure that CSR numbers can be recreated, thus ensuring staff does not reopen files once they are closed and reported;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Finding 1.*

3. Ensure that all LSC eligible case files are reported regardless of funding source;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Finding 1.*

4. Ensure that an updated group eligibility form is drafted and implemented and that staff is trained regarding the requirements of 45 CFR § 1611.6;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Finding 3.*

5. Ensure that Board specifies and documents which government benefits are allowed under the government exemption as required by 45 CFR § 1611.3 and ensure staff is aware and utilizing the exemption as required by the Board's policy;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Findings 2 and 4.*

6. Ensure that the Income and Asset Waiver form includes all the exemptions as stipulated in the Board approved eligibility policy and includes the correct title for authorization;

In its comments to the DR, NMLA stated that this corrective action has been completed. *See Finding 3.*

7. Ensure that all case files include a Income and Asset Waiver form when required;

In its comments to the DR, NMLA took exception to this corrective action. OCE has taken NMLA's arguments into consideration. However, for reasons stated in Finding 3, the corrective action stands as written in the DR.

8. Ensure that all forms do not include defunct closing codes;

In its comments to the DR, NMLA stated that this corrective action has been completed. See Finding 2.

9. Ensure that all staff and PAI case files include a citizenship attestation or proof of alien status as required by 45 CFR Part 1626;

In its comments to the DR, NMLA took exception to this corrective action. OCE has reviewed NMLA's arguments and taken them into consideration. However, for reasons stated in Finding 5 the corrective action stands as written in the DR.

10. Ensure that staff does not certify to the citizenship status of any client;

In its comments to the DR, NMLA stated that this corrective action has been completed. See Finding 5.

11. Ensure that all extended service case files include a retainer agreement;

In its comments to the DR, NMLA took exception to this corrective action. OCE has reviewed NMLA's arguments and taken them into consideration. However, for reasons stated in Finding 6 the corrective stands as written in the DR.

12. Ensure that the LSC closing codes are applied as required by the CSR Handbook (2008 Ed.);

In its comments to the DR, NMLA states that this corrective action has been completed. See Finding 10.

13. Ensure that all donors receive a donor notification letter as required by 45 CFR § 1610.5;

In its comments to the DR, NMLA stated that this corrective action has been completed. See Finding 15.

14. Ensure that all PAI files include documentation of legal advice - specifically for those cases in which court proceedings occurred, the contract attorneys must submit court orders and or pleading with billing information;

In its comments to the DR, NMLA stated that this corrective action has been completed. See Finding 16.

15. Ensure that oversight is conducted regarding PAI files and that the oversight is documented in the file;

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 163.

16. Ensure that PAI attorneys are not paid unless proof of legal assistance is provided with the submitted billing;

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 16.

17. Ensure PAI attorneys are not paid unless they have an active contract;

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 16.

18. Ensure that clinic cases are coded appropriately according to whether assistance provided is by a PAI attorney or a staff attorney;

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 16.

19. Ensure PAI time is documented in such a way that the PAI activity is clearly described as to support the allocation;

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 16.

20. Ensure that only those staff members who participate in PAI activities allocate time to PAI; and

In its comments to the DR, NMLA stated that this corrective action has been completed.
See Finding 16.

21. Ensure that the LSC account is reimbursed \$8,600.00 for unauthorized expenditures using non-LSC funds.

In its comments to the DR, NMLA stated only that this corrective action has been completed. It did not certify with its comments, as requested in the DR, as to when this corrective action was completed.

Loba

OFFICE OF COMPLIANCE AND ENFORCEMENT LSC

New Mexico Legal Aid

2009 SEP 25 P 2:58

LEGAL SERVICES CORP RECEIVED
301 Gold St., SW
P. O. Box 25486
Albuquerque, NM 87125-7871
(505) 243-7871

September 24, 2009

Mr. Danilo A. Cardona, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street, NW 3rd Floor
Washington, DC 20007-3522

Re: Corrections and Response to Draft Report, Recipient No. 732010

Dear Mr. Cardona:

Enclosed please find our Corrections and Response to the Draft Report of LSC's Office of Compliance Enforcement on-site visit conducted June 1-9, 2009.

Although a compliance visit can be stressful, your team was professional in every way and assisted our staff by explaining, as well as enforcing, the compliance requirements of the LSC grants. We have utilized what we learned from the visit, and the comments in your report, to make changes to our systems and procedures to insure future compliance with the LSC Regulations.

If you need any additional information on our comments, please feel free to contact either one of us at 505-243-7871.

Sincerely,



William T. Strouse
Executive Director



Dorene A. Kuffer
Litigation Director

Encl.



**CORRECTIONS AND COMMENTS TO
DRAFT REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement**

New Mexico Legal Aid
June 1-9, 2009
Case Service Report/Case management System Review

Recipient No. 732010

The management and administration of New Mexico Legal Aid (NMLA) have carefully reviewed the Draft Report submitted on August 27, 2009. In response, NMLA provides the following Corrections and Comments:

Corrections:

P. 5 – Bernalillo has been an NMLA office since the merger.

p. 9 - NMLA – there are numerous instances of referring to the program as NMLS throughout the report – please correct to NMLA

p. 10 – last paragraph to Finding 2: the NMLA Board passed the income eligibility guidelines and policy which included the exemption for recipients of public benefits. Although the policy does not articulate which specific programs are included in that exemption, the Board did approve of the exemption.

p. 12 – the Water Project does inquire into a group’s future ability to obtain funds and does consider the resources available to the group. The group is asked the same eligibility questions, regardless of level of service provided. However, the only individuals required to complete the Group Eligibility Form were those who were provided extended services. The Water Unit represents groups – acequias – and as was explained to the OCE investigators, members of otherwise eligible acequias have socioeconomic characteristics consistent with other LSC-funded clients. This fact is generally self-evident given the nature of acequias in New Mexico and thus was not a question repeatedly asked of the acequias that were represented by NMLA. Although an earlier version of the group eligibility form did not include the information required of groups, the post-2008 version of the form did. It should be noted, however, that the unit did not represent those types of groups.

p. 14 – The OCE team was provided with all current policies, including the Income Asset Waiver which was modified in 1/09 to delete the “Regional Managing Attorney” and to add “Managing Attorney”.

p. 27 – Typographical error: NMLA’s Grant Director “oversees” (fifth line)

To clarify that paragraph: The referral from the domestic violence partner agency goes directly to the local office for eligibility and intake. Once a decision is made to staff the case, a local attorney is found and letters are sent. Then, when the attorney is finished with the case, the closing information, including pleadings, and billing information are sent to the Grants Director and PAI Coordinator.

Comments:

RECOMMENDATIONS:

1. Implemented
2. Implemented
3. Implemented by using the PAI attorney page in Prime CMS
4. Implemented
5. Implemented by including the information in the eligibility page of the CMS
6. Implemented
7. Implemented
8. This is no longer an issue for NMLA as we are no longer accepting court appointments in GAL cases
9. Implemented
10. Implemented
11. Unclear why this is a recommendation as this is, and has been, a function of our CMS
12. Implemented

REQUIRED CORRECTIVE ACTIONS

1. **Completed.** After the OCE team completed their visit, an investigation was conducted by administration and it was learned that the two cases with incorrect closing codes were closed after the upgrade to the CMS, but back-dated to 12/31/07. The cases were closed in the first three months of 2008 and they would have been timely closed had the accurate date of closing been used. It is agreed that back-dating a file closing date is inappropriate, as is opening a closed case and making changes beyond the calendar year it was initially closed in. All staff have been informed of the appropriate way to close cases and have been trained in the proper use of closing codes at an office-wide post-compliance visit training event held on June 24, 2009.
2. **Completed.** Prior to this visit of the OCE, NMLA's CSR was generated using a search performed on the "LSC eligible case" field using the dates 1/2/xx-12/31/xx. Staff had been informed that all cases that were deselected were to have been closed on 1/1/xx. However, new staff had not been trained on this protocol (the new management of NMLA was unaware of this, believing the CMS would accurately produce the CSR report by utilizing the "CSR Eligible" field) – and the protocol was incorrect. Accordingly, the CSR and case file lists provided to OCE included several cases where "CSR Eligible" was *not* checked because the case should *not* have been included in the CSR. Several of these files were included as non-compliant in portions of this report and will be discussed in the appropriate Corrective Action comments – when they should not have been reported to LSC to begin with. Beginning in 2009, all cases will be closed on the date they were actually, physically closed (never backdated as set forth in 1 above). Further, all staff have been trained, and management is verifying, the use of the "CSR eligible" check box at case closing. If a case is de-selected, it will be closed using the closing code "X", with the appropriate de-selection criteria noted. NMLA will utilize the CSR Reporting program built into the Prime CMS, which will result in accurate reporting that can be replicated as needed as this report pulls information from the correct field – "CSR Eligible."
3. **Completed.** Staff were trained and tested on the appropriate reporting of cases to LSC on June 24, 2009. Management have also been trained separately to monitor the appropriate closing of files and to insure that all cases, regardless of funding, are captured for LSC reporting purposes.
4. **Completed.** NMLA has implemented the use of the Group Form provided by OCE after their visit. All staff have been trained and the form is being implemented for all currently open cases and on a go-forward basis.
5. **Under Review.** The NMLA Board is reviewing which government benefits to list as eligible to obtain the automatic financial eligibility. This should be fully implemented, with the staff trained, after the December Board meeting.
6. **Completed.** The Income and Asset Waiver has been modified to mirror the Income and Asset Policy. The Executive Director and his/her designee may approve the waiver and all managers have been trained on the use of the form. The modified form was distributed to all staff and staff were told to refrain from using any older versions of the Income and Asset Waiver.
7. **Exception.** NMLA takes exception to this being listed as a "corrective action". All cases without waivers (3 were found) were opened prior to this administration and there were no issues with waivers in any late 08 or 09 files. This does not constitute a "pattern of non-compliance." Additionally, a review of the files enumerated in the report show the following discrepancies:
 - a. 07e-100660 – Invalid Number
 - b. 08e-1000747 – 89% - no need for Waiver
 - c. 08e-11003055 – 135%
 - d. 07e-7000932 – 139%

- e. 07e-1000551 – 71% - no need for Waiver
- f. 06e-100006375 – 167%
- g. 05e-13004529 – Group case and while there may not have been a “form” in the file, there was extensive evidence in the file regarding the purpose and reasons for representing the client. This case was the second case opened for this group and documentation of their status was in the first file.

All staff have been re-trained on the need for Income and Asset Waivers.

8. **Completed.** The use of the form mentioned in the report has been discontinued. Staff have been informed that the only proper way to close files is within the CMS, in a timely fashion and using only the current codes in the 2008 CSR.
9. **Exception to Corrective Action.** NMLA takes issue with this finding and Corrective Action as to staffed cases. Those files which do appear to have citizenship compliance issues on staff cases did not show a “*pattern of non-compliance.*” All were staffed by advocates who are no longer with the program. The majority of the files cited in this Finding were PAI files. NMLA agrees with the corrective action as to the PAI files. As explained below, staff had not been trained on compliance issues for PAI files prior to the OCE visit.
10. **Completed.** In addition to providing all staff with the OLA regarding citizenship attestation by attorneys, all staff have been trained on this issue. Additionally, NMLA no longer has a contract with the State of New Mexico to represent juveniles or wards – the cases in which this issue arose.
11. **Exception to Corrective Action.** NMLA takes exception to this Finding and need for corrective action. In this report, the OCE found NMLA in *substantial compliance* on retainers, a non-CSR issue. The number and location of files found with issues, do not arise to a “*pattern of non-compliance.*” Management reviewed all files identified in the OCE report and the following was observed:
 - a. 08e-1001979 – Retainer in file, executed 3/24/08
 - b. 08e-11006280 – No retainer necessary, this case was closed B
 - c. 07e-1005802 - Retainer in file, executed 9/19/07
 - d. 04e-8012724 – Retainer is present in the file, it is a currently open case. The retainer is a form retainer in use on SSI/SSDI cases in 2004.
 - e. 09e-9001398 – This case was closed in '09, retainer currently in file.
 - f. 08e-9005030 – This case was closed in '09, retainer currently in file.
12. **Completed.** Staff have been trained on the proper use of the closing codes. As discussed with the investigators on site, staff believed that “litigation” meant a contested court hearing, or appearance in court. Many of the divorce files were closed under incorrect codes due to this mis-conception. Staff have been instructed that in any case where a pleading has been filed the closing code must include the term “litigation” – whether or not you appeared in court.
13. **Completed.** The Executive Director has forwarded donation letters to all participants in the Equal Access to Justice and United Way campaigns where the donation to NMLA were over \$250.
14. **Completed.** When a case is referred out, all PAI attorneys are being provided a letter which sets forth their responsibilities, including providing pleadings and/or a documentation of legal work performed; whether they are contract or non-contract PAI attorneys. Local offices have been asked to assist in monitoring the closing documentation and to obtain the documents when necessary.
15. **Completed.** All staff were trained on the protocol for referral/cooperation with PAI attorneys on June 24, 2009. NMLA now has a protocol in place in each office for the handling and assignment of PAI cases. Given the various pro bono/PAI structures in place across the state, it

has been time-consuming, but NMLA has worked with each judicial district and provided training to both the pro bono committees and local bar in what is required of a PAI attorney and what documentation will be necessary to close a file. To insure compliance, the PAI Coordinator is responsible for the oversight and follow-up on all PAI cases. It is, however, the field office manager who must monitor LSC compliance in the individual files.

- 16. Completed.** The protocol for PAI requires the attorney to submit both a bill and the proper case closing documentation before their invoice will be paid by NMLA.
- 17. Completed.** All contracts have been reviewed and all currently active contract PAI attorneys have current contracts on file. Additionally, the CFO has directed the fiscal staff to not pay any PAI attorney unless there is an active contract on file.
- 18. Exception to Finding.** NMLA takes exception to this finding as it is not as a result of a "*pattern of non-compliance.*" The issue as to time-keeping on clinic cases in **one** of our eleven offices most likely resulted in *under* reporting of PAI hours. The issue of the use of PAI attorneys and the proper coding of time and coding of cases has been discussed with that one office and changes to their procedures have been made.
- 19. Completed.** The staff has been trained on timekeeping and notes for timekeeping (both PAI and non-PAI time) four (4) times in the past 9 months.
- 20. Completed.**
- 21. Completed.**