



FINAL REPORT
LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

DNA – Peoples Legal Services, Inc.
Follow-up to a Case Service Report/Case Management System Review
July 18-21, 2011

Recipient No. 703068

I. EXECUTIVE SUMMARY

Finding 1: Sampled cases evidenced that DNA's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

Finding 2: DNA's intake procedures and case management system are in substantial compliance with LSC requirements.

Finding 3: Sampled cases evidenced that DNA maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

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

Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of citizenship). Therefore, Required Corrective Action No. 1 2010 CSR/CMS Report remains open.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). Therefore, Required Corrective Action No. 3 2010 CSR/CMS Report can be closed.

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

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

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Therefore, Required Corrective Action No. 2, 4, and 5 from the 2010 CSR/CMS Report can be closed.

Finding 10: Sampled cases evidenced that DNA's application of the CSR case closure categories are consistent with Section VIII and IX, CSR Handbook (2008 Ed.). No further corrective action is required from the 2010 CSR/CMS Report.

Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed.) § 3.3 regarding timely closing of cases. Therefore Required Corrective Action No. 6 from the 2010 CSR/CMS Report can be closed.

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

Finding 13: Review of the recipient's policies and the list of attorneys who have engaged in the outside practice of law, revealed that DNA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

Finding 14: DNA continues to make all the payments for its Flagstaff purchased office building using LSC funds and these payments remain in excess of the rental cost of its prior Flagstaff office building. As of June 28, 2011, DNA entered into a property agreement with LSC. This agreement provides LSC with a reversionary interest in the building.

Finding 15: DNA should adopt a policy or procedure to monitor the professional income of its contract attorneys.

Finding 16: DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that DNA has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period. However, DNA is underreporting certain PAI Expenses which results in an understated PAI ratio.

Finding 17: DNA is using LSC funds to pay bank fees associated with its general operating account. Additionally, the entire fee is charged to LSC funds rather than LSC's proportional share of that account.

Finding 18: DNA has established effective internal controls in support of its credit card account. DNA maintains sufficient supporting documentation for all charges and the program incurs no finance charges associated with this account.

Finding 19: DNA has recognized the liability of the Questioned Cost amount of \$147,271.15, posting it to the General Ledger effective December 31, 2010. The liability and its source as a questioned cost are set forth in the DNA 2010 audited financial statements. Therefore, Required Corrective Action No. 9 from the 2010 CSR/CMS Report can be closed.

Finding 20: Timeliness and accuracy in bank reconciliations has been only partially implemented. The DNA *Accounting Procedures Manual* is out of date and does not adequately define the reconciliation process and responsibilities for all financial accounts. It is noted that the Morgan-Stanley investment account was not timely reconciled; the reconciliation function incorporated in the Programs accounting software has not been utilized; and un-cleared checks dating as far back as 2007 have not been properly voided. DNA has failed to fully implement Required Corrective Action No. 7 from the 2010 CSR/CMS Report, therefore it remains open.

Finding 21: DNA has not taken steps to limit liability in making salary advances by limiting or restricting the practice within the policies in the Accounting and Personnel Manuals.

Finding 22: DNA received attorneys' fees in a single case during June 2010. In accordance with 45 CFR § 1609.4, these funds were credited in the general ledger as LSC derivative income. However the DNA 2010 audited financial statement reflected this income as unrestricted non-LSC funds. A written request for information regarding this (and other items reflected in the audit) was made by LSC on June 7, 2011, requiring a response by July 7, 2011. The Program had failed to respond at the time of the FUR.

Finding 23: DNA documentation indicates general compliance with the requirements of 45 CFR Part 1635 – Timekeeping. The timekeeping for case handlers is being kept electronically and contemporaneously by case, matter or supporting activities utilizing Kemp's Prime. Though the process is not fully documented in DNA Accounting and Personnel Policies and Procedures, this data is utilized to allocate time by fund source for payroll purposes and is utilized for direct and indirect funding allocation.

Finding 24: The DNA *Accounting Procedures Manual* does not adequately define administrative internal controls or significant fiscal processes. Additionally, the specific structure, functions and report generation capabilities of the accounting software being utilized does not meet the requirements of LSC Grant Assurances, LSC Regulations and the Accounting Guide for LSC Recipients.

Finding 25: DNA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

Finding 26: A cash disbursement review for the period January 1, 2010 through May 31, 2011, indicates DNA is in general compliance with the parts of 45 CFR Part 1630.

Finding 27: The accounting software currently in use by DNA may not be suitable for the corporate structure, geographic dispersion, and staff capabilities of the Program.

Finding 28: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

Finding 29: 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 30: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1617 (Class actions).

Finding 31: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

Finding 33: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).

Finding 34: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).

Finding 35: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).

Finding 36: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).

II. BACKGROUND OF REVIEW

On July 18-21, 2011, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Follow-up ("FUR") review on-site visit at the DNA – Peoples Legal Services, Inc. (DNA). This review was a follow-up to a Case Service Report/Case Management System ("CSR/CMS") review and the team assessed whether DNA implemented the corrective actions described in OCE's 2010 CSR/CMS Final Report ("The Report"), in addition to assessing the program's compliance with the LSC Act, regulations, and other applicable guidance such as Program Letters, the LSC Accounting Guide for LSC Recipients (2010 Edition), and the Property Acquisition and Management Manual. The visit was conducted by a team of four (4) LSC attorneys and two (2) LSC fiscal analysts.

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 DNA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed DNA for compliance with regulatory requirements of: 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 1604 (Outside practice of law); 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);² 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 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 DNA's upper and middle management, staff attorneys and support staff. DNA'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 in the Window Rock, Farmington, Flagstaff, Shiprock, Tuba City, and Chinle offices. The sample case review period was from January 1, 2009 through May 31, 2011. Case file review relied upon randomly selected files as well as targeted files identified to test for compliance with LSC requirements, including eligibility, potential duplication, timely closing, and proper application of case closure categories. In the course of the on-site review, the OCE team reviewed approximately 357 case files.

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

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

DNA is an LSC recipient that operates a main office in Window Rock, AZ and branch offices in Farmington, Shiprock, Chinle, Flagstaff, Tuba City, Crownpoint, Mexican Hat, and Keams Canyon. Branch offices are located in Arizona, New Mexico, and Utah. DNA received a grant award from LSC in the amount of \$3,852,568 for 2009; \$3,988,338 for 2010; and \$3,746,798 for 2011. These amounts include basic field grants and Native American Funds.

For 2010, DNA reported 4,316 closed cases in its CSR data. DNA's 2010 self-inspection report indicated a 3.5% error rate with exceptions noted in seven (7) files out of 199 reviewed. For 2009, DNA reported 4,171 closed cases in its CSR data. DNA's 2009 self-inspection report indicated a 4.3% error rate with exceptions noted in eight (8) files out of the 186 cases reviewed.

By letter dated May 10, 2011, OCE requested that DNA provide a list of all cases reported to LSC in its 2009 CSR data submission ("closed 2009 cases"), a list of all cases reported in its 2010 CSR data submission ("closed 2010 cases"), a list of all cases closed between January 1, 2011 and May 31, 2011 ("closed 2011 cases"), and a list of all cases which remained open as of June 1, 2011 ("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 DNA staff and the other for cases handled through DNA's PAI component. DNA was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12 and the LSC *Access to Records* protocol (January 5, 2004). DNA 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 2009, 2010, and 2011 closed cases and open cases, as well as a proportionate distribution of cases from DNA's offices. 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 DNA agreement of June 3, 2011, DNA 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.³ DNA's management and staff cooperated fully in the course of the review process. As discussed more fully below, DNA 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 Managing Attorneys in the branch offices and the Executive Director in the main office.

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

On July 21, 2011, OCE conducted an exit conference during which DNA was provided with OCE's initial findings. DNA 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.

By letter dated October 28, 2011, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions regarding the July 18 – 21, 2011 FUR visit. DNA was asked to review the DR and provide written comments. DNA requested, and OCE granted, an extension to submit its comments. By email dated December 16, 2011, DNA's comments were received. The comments have been incorporated into this Final Report, where appropriate, and are affixed as an exhibit.

III. FINDINGS

Finding 1: Sampled cases evidenced that DNA's automated case management system (ACMS) is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

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

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, DNA' ACMS is sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

There were 10 cases reviewed from the sample where the information in the file was inconsistent with that in the ACMS. Six (6) of these case files reviewed were designated as Flagstaff PAI cases, however, these cases should have been closed as staff cases. DNA staff provided legal advice to the client prior to referring the case to a PAI attorney. The only documentation by the PAI attorney was that they "consulted the client on bankruptcy". No additional information was documented in the file indicating how the PAI attorney applied the law to the client's specific facts, therefore no legal advice was documented by the PAI attorney. These were bankruptcy cases where the PAI attorney agreed to provide consultation to the client. If the client decided to proceed with a bankruptcy the PAI attorney would represent the client for a fee outside of the client's relationship with DNA. The extended service portion of the case is not reported to LSC. *See* Case Nos. 10E-13030573, 11E013031370, 11E-13030769, 10E-13029966, and 09E-13025869.

Additionally, there were four (4) files that were designated as LSC eligible in error. DNA uses a "Case Type" designation in their ACMS to indicate which cases should be reported to LSC in their CSRs and which case should be "deselected" from reporting. Intake staff is required to enter into the "Case Type" box either an "S" for "staff," as a way to indicate an LSC eligible case, or "D" for "deselect," as a way to indicated cases that should not be reported to LSC. Each of these four (4) cases was funded by Arizona Community Partnerships and Innovative Practices,

otherwise known as CPIP (funding source no. 42). The cases appeared to be over the income limits established by DNA for LSC eligible cases, as required by 45 CFR § 1611.3(d)(1), and had been labeled as “Case Type S” in error. *See* Case Nos. 10E-13026928, 09E-13023532, 09E-7026539, and 10E-13029806.

In response to the DR, DNA offered no comments on this Finding.

Finding 2: DNA’s intake procedures and case management system are in substantial compliance with LSC requirements.

Intake Procedures

DNA’s intake procedures comply with the LSC requirements. Intake was reviewed in the Flagstaff, Window Rock, Shiprock, Farmington, and Chinle offices. Support staff and managing attorneys were interviewed, and written and electronic documents were reviewed for compliance. Although intake is decentralized, the screening of essential compliance elements is consistent, and DNA’s intake procedures and case management system generally support the program’s compliance-related requirements.

A Case Closing Form and/or Case Review Form are required once a case is closed. These forms are used to document the highest level of service provided to the client; they also confirm the client’s eligibility. Additionally, a case closing code is assigned to the case and a compliance checklist is completed.

Intake interviews revealed that intake is conducted in a similar manner in all offices OCE visited. The intake screener first inquires into what the applicant’s legal problem is and asks for their name and opposing party in order to conduct a program-wide conflicts check in the ACMS (DNA utilizes Prime as their ACMS). Duplicates will also be displayed through this conflict check. If no conflicts or duplicates exist, the intake screener will ask the applicant about income and assets in order to make a preliminary determination about eligibility. If, based on the preliminary screening, the applicant appears eligible; the intake screener will assign the file a case number and begin a full intake.

The intake screener proceeds to conduct a more thorough eligibility screening, including questions related to income, assets, and citizenship, by asking questions as they appear on the ACMS, and collects the applicant’s personal information, including details regarding their legal problem. After all sections of the ACMS intake have been completed, and if the intake screener finds the applicant to be eligible for services, the screener will tell the applicant that they are eligible for services and will make them an appointment to meet with an attorney. Walk-in applicants are asked to sign a citizenship attestation during this initial meeting.

For applicants whose income is between 125% and 200% of the Federal Poverty Guidelines (“FPG”) DNA utilizes an Over Income Memo. This memorandum documents the authorized factors used when accepting an over-income applicant, in compliance with 45 CFR § 1611.5 and DNA’s Financial Eligibility Guidelines.

Once a client is determined eligible the offices conduct case acceptance meetings and if an applicant's case is accepted he/she is then scheduled for an appointment with an attorney.

Clinics/Outreach

Interviews revealed that DNA does provide legal services through outreach and clinics. A staff attorney who was interviewed, stated that at outreach a paper intake form, "Form 10," is used and that if individualized advice was to be given, someone would call the office to run a conflicts check. The staff attorney also indicated that the Window Rock office participated in Gallup Pro Se Law Day, where legal issues relating to New Mexico Law and Navajo Law were discussed. He stated that the paper intake form, "Form 10," was also used at this clinic. The staff attorney also indicated that other staff members attend chapter meetings on the Navajo Reservation and provide general information. The staff attorney interviewed indicated that staff members and legal secretaries attend the clinics and that the legal secretaries hand out pamphlets and brochures while staff attorneys give legal advice.

The Farmington, Shiprock, and Chinle offices conduct outreach at various locations. The Farmington office coordinates a monthly *pro se* clinic where they provide forms and legal information to the attendees. Clinic attendees are pre-screened one week before the clinic, so that their eligibility is determined prior to the clinic. At other outreach initiatives, if a person requests to speak with a program attorney to receive legal advice, they are instructed to call a DNA office in order to be screened and have their legal concern addressed at a later date once they have been deemed eligible.

At the Window Rock and Flagstaff offices a Pro Se Divorce Clinic is conducted once per month, with conflicts and eligibility screened on-site. DNA also indicated that a Do It Yourself Clinic is conducted once per month, with conflicts and eligibility screened on-site. DNA indicated that it counts these as individual cases. In addition, DNA indicated that the Window Rock office conducts a Tax Prep Clinic, but that as of January 1, 2011, it no longer counts the individuals assisted as individual cases.

In an attempt to evaluate the sufficiency of the eligibility processes used during the Gallup Pro Se Law Day, OCE requested a copy of the paper intake "Form 10." The receptionist interviewed did not know what a "Form 10" was and according to several legal secretaries "Form 10" is no longer used, therefore no copy was provided.

CSR Training

Staff interviewed indicated they had been provided CSR training when they were hired and that DNA conducts ongoing training with regard to any changes in the Federal Regulations or CSR Handbook. According to staff the last training occurred in December 2010. All staff has access the CSR Handbook. Staff indicated that they were not aware of any Frequently Asked Questions distributed by LSC.

Group Clients

Intake staff reported that they have conducted intake screenings for group clients and the group's eligibility is determined by ensuring that each member of the group is eligible for services, pursuant to DNA's Financial Eligibility Guidelines and the requirements of 45 CFR Part 1626. However, prior to individually screening the group members for eligibility, there is no inquiry made regarding the group's means of obtaining funds to retain private counsel as is required under 45 CFR § 1611.6 (a) . DNA must ensure that an inquiry is made into a group's means to obtain private counsel, pursuant to 45 CFR § 1611.6 (a), when determining the group's eligibility.

General Intake Issues

Reasonable Income Prospects Screening: During intake, the intake staff interviewed reported that no inquiry is made into the reasonable income prospects of applicants. Additionally, in the manual intake form, which is used during telephone and walk-in intake screenings, there is no place to record reasonable income prospects. As such, it is recommended that DNA's manual intake form is revised to include a screening for reasonable income prospects and DNA must conduct staff training on the same, pursuant to 45 CFR § 1611.5(a)(4)(i), which mandates that DNA inquire into every applicant's reasonable income prospects during intake.

Citizenship and Eligible Alien Status Screening: The majority of the intake staff interviewed demonstrated familiarity with the alien eligibility requirements of 45 CFR Part 1626. Interviews revealed that most staff verify citizenship status during the intake screening and, when necessary, obtain documentation of eligible alien status before completing an intake form: however, the manual intake form does not include a place to note verification of citizenship or eligible alien status. One intake staff member indicated that citizenship verification is not done at the initial intake screening and is only done once the case has been accepted for service. It is recommended that DNA revise its manual intake form to include a section regarding citizenship eligibility. It is further recommended that DNA conduct staff training concerning 45 CFR § 1626.6(a) and CSR Handbook (2008 Ed.), § 5.5, specifically on the requirement to verify citizenship eligibility during a telephone intake screening and to obtain a signed citizenship attestation, or review alien eligibility documentation from every client seen in person.

Income Screenings: Interviews evidenced that certain intake staff are not aware of DNA's income guidelines and the exceptions that can be applied to an applicant whose income is between 125% and 200% of the Federal Poverty Guidelines (FPG). It is recommended that intake staff receive training on the authorized exceptions enumerated in 45 CFR § 1611.5 that can be applied to an applicant whose income is between 125% and 200% or over 200% of the FPG. Additionally, there was an intake screener who stated that there were no circumstances under which an applicant whose income appeared to be over 200% of the FPG could be LSC-eligible, in contradiction with DNA's income policy.

It should be noted that one (1) intake screener indicated during an interview that she used a form titled "2009 Poverty Guidelines" (Effective 1/23/09) for reference during intake interviews. This form is not only outdated, but it displays incorrect information, including that an Over Income

Memorandum is necessary for an applicant whose income is over 200% of the FPG or “over-asset,” but it does not state an Over Income Memorandum is necessary for an applicant who is “under asset” with income under 200% of the FPG but over 125% of the FPG. It is recommended that all forms utilized by DNA intake staff reflect the current poverty guidelines and properly reference LSC regulations.

Asset Screenings: Interviews revealed that the majority of the intake staff is familiar with DNA’s asset limit and has an understanding of the categories of assets that should be included and excluded from asset eligibility determination. However, there were intake interviews that revealed confusion regarding DNA’s asset guideline for households comprised of more than two persons, e.g., one intake staff member believed that DNA’s asset limit is \$5,000.00, regardless of how many people comprise the household. It is recommended that intake staff receive training on 45 CFR § 1611.3 (d)(1), which identifies the assets that can be excluded from the asset calculation; it is further recommended that intake staff receive training on DNA’s asset guidelines and how they are to be applied during an intake screening.

There were defaults noted in the essential category of total assets. A \$0 (zero) appeared in this section of the ACMS when a new file was opened. Blanks did, however, appear in the spaces next to the drop down menu items for asset information collection. The CSR Handbook requires that fields critical to eligibility determinations not have defaults. Fields determined to be critical to eligibility are: income, assets, number in the household, citizenship/eligible alien status, and LSC eligibility. *See* CSR Handbook (2008 Ed.), § 3.6 and LSC Program Letter 02-6 (June 6, 2002). DNA must resolve this issue immediately through a re-programming of the ACMS to delete the default in this essential category.

In response to the DR, DNA offered no comments on this Finding.

Finding 3: Sampled cases evidenced that DNA maintains the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income exceed 125% of the Federal Poverty Guidelines (FPG).

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.⁴ *See* 45 CFR § 1611.3(c)(1), CSR Handbook (2008 Ed.), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed.), § 5.2.

In those instances in which the applicant’s household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guidelines (“FPG”) and the recipient

⁴ A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed.), § 5.3.

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

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

DNA’s Financial Eligibility Policy was most recently adopted by its Board of Directors on February 20, 2010. The policy established a Maximum Income Level at 125% of the FPG. The policy sets forth a detailed description of procedures to be used in determining household size, income, authorized exceptions for persons with income between 125% and 200% of the FPG, authorized exceptions for persons whose income exceeds 200%, screening of income prospects, and group eligibility screening. DNA’s income and asset guidelines are programmed into the program’s ACMS.

As stated in Finding 2, interviews evidenced that there were some intake staff that were not aware of DNA’s income/asset guidelines and the exceptions that can be applied to an applicant whose income is between 125% and 200% of the FPG and DNA fails to comply with 45 CFR § 1611.7(a) and Advisory Opinion # AO-2009-1006 by failing to inquire about an applicant’s income prospects.

DNA is in substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed.), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG. Seven (7) files reviewed appeared to be over DNA’s established income limits for LSC eligible cases. *See* Case No. 09E-13024670 which is a closed 2009 case where the client’s monthly income of \$2,706.00 for a household of five is 125.91% of the FPG, and there were no authorized exceptions noted or over-income memorandum in the file. *See also* Case No. 06E-2003057 which is a closed 2011 case where the client had a total monthly income of \$1,915.33 for a household of two which is above 125% but below 200% of the FPG, and there were no authorized exceptions noted or over-income memorandum in the file. *See also* Case No. 10E-9029074 which is a 2010 case where the total household income for a three-person household was \$3,001.00 a month, which exceeds 125% of the FPG but was below 200% of the FPG and there were no authorized exceptions noted or over-income memorandum in the file. *See also* Case No. 10E-9029075 which is a 2010 case where the total household income for a three-person household was \$3,001.00 a month, which exceeds 125% of the FPG and there were no authorized exceptions noted or over-income memorandum in the file. *See also* Case No. 08E-9019147 which is a 2010 case where the total household income for a two-person household was \$2,107.00 a month, which exceeds 125% of the FPG. The case file did not contain any notations of authorized exceptions to the income eligibility requirement or an approved over-income memorandum. *See also* Case No. 09E-9026074 which is a 2009 case where the client’s total

household income for a two-person household was \$3,500.00 a month, which exceeds 125% of the FPG. The case file did not contain any notations of authorized exceptions to the income eligibility requirement or an approved over-income memorandum. *See also* Case No. 11E-9031859 which is a 2011 case where the client was at 188% of the FPG and where an over-income approval memorandum was drafted but not approved. The case file did not contain any notations of authorized exceptions to the income eligibility requirement.

There were two (2) additional 2009 closed cases that were over 125% but below 200% of the FPG with no authorized exceptions noted in the file and no approved over-income memorandum. *See* Case Nos. 08E-2004493 and 09E-2005064. At the time these cases were opened DNA's eligibility policy incorrectly had an income ceiling of 200% of the FPG, therefore, any cases where the client's income was below 200% of the FPG did not require any income exceptions or over-income memorandum. This issue was addressed in the previous CSR/CMS visit and DNA's eligibility policy has since been revised and currently complies with the regulations.

Additionally, there were five (5) Flagstaff cases where the client's income exceeded 125% but was below 200% of the FPG and the files contained an approved over-income memorandum with the box stating "other significant factors" checked off with a notation indicating that the client lacked an affordable attorney in his/her service area. *See* Case Nos. 11E-13031984, 11E-13031643, 10E-13028059, 11E-13027158, and 11E-13032244. The lack of affordable alternative attorney in the area does not fall within any of the exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR § 1611.5(a)(4), therefore making these cases non-compliant. It should be noted, as discussed *supra* in Finding 1, four (4) non-LSC funded cases also appeared to be over DNA's established income limits for LSC eligible cases but, due to ACMS input error, were designated as LSC eligible cases. *See* Case Nos. 10E-13026928, 09E-13023532, 09E-7026539, and 10E-13029806.

In response to the DR, DNA offered no comments on this Finding.

Finding 4: Sampled cases evidenced that DNA maintains the asset eligibility documentation as required by 45 CFR §§ 1611.3(c) and (d), 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.⁵ *See* CSR Handbook (2008), § 5.4.

In the event that a recipient authorizes a waiver of the asset ceiling due to the unusual circumstances of a specific applicant, the recipient shall keep such records as may be necessary to inform LSC of the reasons relied on to authorize the waiver. *See* 45 CFR § 1611.3(d)(2). The revisions to 45 CFR Part 1611 changed the language regarding assets from requiring the recipient's governing body to establish, "specific and reasonable asset ceilings, including both

⁵ A numerical total value must be recorded, even if it is zero or below the recipient's guidelines. *See* CSR Handbook (2008 Ed.), § 5.4.

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

The Financial Eligibility Standards approved by the DNA Board of Directors on February 20, 2010, establishes an asset ceiling of \$10,000 for an the first person in the household and \$4,000 for each additional person. Exempt from consideration is the applicant or household’s principal residence, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law.

As stated in Finding 2 interviews revealed that the majority of the intake staff is familiar with DNA’s asset limit and has an understanding of the categories of assets that should be included and excluded from asset eligibility determination. However, intake interviews that revealed confusion regarding DNA's asset guideline for households comprised of more than two (2) persons. Additionally, one (1) intake staff member believed that DNA's asset limit is \$5,000.00, regardless of how many people comprise the household. Intake interviews also revealed that an applicant's second vehicle is considered an asset, regardless of whether it is used for transportation.

All case files reviewed contained the required documentation to comply with LSC’s asset eligibility requirements.

In response to the DR, DNA offered no comments on this Finding.

Finding 5: Sampled cases evidenced non-compliance with 45 CFR § 1626.6 (Verification of citizenship). Therefore, Required Corrective Action No. 1 from the 2010 CSR/CMS Report remains open.

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

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.⁶ 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.

Sampled cases evidenced two (2) case files that contained citizenship attestations that were not dated. *See* Case Nos. 07E-9018192 and 11E-9031859. Furthermore, there were five (5) cases reviewed that failed to contain a citizen attestation when required. *See* Case Nos. 10E-2005382, 08E-2004502, 07E-9017092, 11E-5031420, and 09E-4023716. Finally, there was one (1) case where the citizen attestation was obtained two weeks after the client was seen in person for intake. *See* Case No. 11E-9031395 which is a case where walk-in intake was done on March 2, 2011 but the citizenship attestation was obtained on March 11, 2011. OCE recommends that DNA establish a procedure for ensuring that citizenship attestations are obtained the first time a potential applicant is seen in person.

The 2010 Report found DNA was non-compliant with the requirements of 45 CFR § 1626.6 (Verification of citizenship) due to several cases reviewed lacking the required citizenship documentation. DNA continues to be non-compliant. Therefore, Required Corrective Action No. 1 remains open. DNA must ensure that all case files contain citizenship attestations, where appropriate, and that all attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5.

In response to the DR, DNA stated that of the five (5) cases referred to in the DR without a signed citizenship attestation, four (4) of those were Native American in which their tribal census numbers were obtained. DNA further stated that if an individual is a member of an Indian Tribe, they are by definition a citizen of the United States under the 1924 Indian Citizenship Act and rather than finding fault with DNA for not asking a Native American to verify (s)he is a United States Citizen with a signature, that LSC instead accept a Tribal Census Number as written verification that the applicant is a United States Citizen.

DNA indicated that on September 29, 2011, all staff attended an on-line training on citizenship requirements, where LSC regulations and corresponding policies were reviewed.

⁶ *See* Kennedy Amendment at 45 CFR § 1626.4.

Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements). Therefore, Required Corrective Action No. 3 from the 2010 CSR/CMS Report can be closed.

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.⁷ Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

The Report found DNA to be non-compliant with 45 CFR § 1611.9 due to several reviewed cases lacking a retainer when required. Corrective Action No. 3 directed DNA to ensure a retainer agreement is executed with each client who receives extend legal services as required by 45 CFR § 1611.9.

DNA currently is in substantial compliance as there were only nine (9) cases reviewed from the sample that failed to contain a retainer agreement when required pursuant to 45 CFR § 1611.9. *See* Case Nos. 09E-13022534, 09E-2005145, 04E-2001590, 08E-2004502, 11E-5031199, 10E-3028787, 09E-5024420, 10E-50280008, and 09E-3024844. There were three (3) cases where the retainers were untimely obtained. *See* Case No. 11E-5031185 which is a case that was closed on March 9, 2011 and retainer is dated March 16, 2011. *See also* Case No. 10E-200-5838 which is a case in which the attorney drafted a motion for the client on December 2, 2010, the retainer was signed on December 10, 2010, and the case was closed on December 13, 2010. *See also* Case No. 11E-9032332 which is a case that was closed on June 7, 2011 and retainer is dated June 15, 2011. There were two (2) cases which contained a signed retainer agreement but it was not dated. *See* Case Nos. 08E-2004443 and 08E-2004550.

Inasmuch as the FUR demonstrated that DNA is in substantial compliance with 45 CFR § 1611.9, Required Corrective Action No. 3 can be closed. However, it is recommended that DNA continue to educate staff on the importance of obtaining and executing a valid retainer agreement prior to commencing extensive services.

In response to the DR, DNA offered no comments on this Finding.

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

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

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

Case files reviewed indicated that DNA is in compliance with the requirements of 45 CFR Part 1636.

In response to the DR, DNA offered no comments on this Finding.

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.

DNA's Priorities were most recently adopted by its Board of Directors on February 26, 2011. DNA's Priorities are: Income Maintenance, maintaining/obtaining habitable housing, education, consumer, health, elder law/abuse, disability rights, economic development, access to justice, preservation/promotion of tribal sovereignty, community education, child support, family matters emphasizing divorce with domestic violence or where children at risk, domestic violence orders of protection, custody with children at risk, and other cases where justice will be served by DNA representation/assistance.

DNA is in compliance with 45 CFR Part 1620. All sampled files reviewed were within DNA's priorities.

In response to the DR, DNA offered no comments on this Finding.

Finding 9: Sampled cases evidenced substantial compliance with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided). Therefore, Required Corrective Action Nos. 2, 4, and 5 from the 2010 CSR/CMS Report can be closed.

LSC regulations specifically define “case” as a form of program service in which the recipient provides legal assistance. *See* 45 CFR §§ 1620.2(a) and 1635.2(a). Consequently, whether the assistance that a recipient provides to an applicant is a “case”, reportable in the CSR data, depends, to some extent on whether the case is within the recipient’s priorities and whether the recipient has provided some level of legal assistance, limited or otherwise. If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed.), § 7.2.

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

The Report found DNA to be non-compliant with CSR Handbook (2008 Ed.), § 5.6 (Description of legal assistance provided) due to several reviewed cases lacking documentation of the legal assistance provided. Required Corrective Action No. 2 directed DNA to ensure that each case reported to LSC documents the legal advice or assistance provided the client as required by CSR Handbook (2008 Ed.), § 5.6.

DNA is in substantial compliance as there were only six (6) cases reviewed from the sample that failed to contain a description of the legal assistance provided. *See* Case Nos. 10E-13029806, 08E-2004075, 11E-3031256, 11E-3031279, 11E-3031529, and 10E-3027460

Inasmuch as the FUR demonstrated that DNA is in substantial compliance with CSR Handbook (2008 Ed.), § 5.6, Required Corrective Action No. 2 can be closed.

Furthermore, the Report indicated that there were cases that were reported to LSC where a Legal Document Preparer assisted clients in completing pro se documentation. It was determined that Legal Document Preparers are considered non-attorneys and may only provide legal information; therefore the cases should not have been reported to LSC.

The FUR demonstrated that DNA is no longer using Legal Document Preparers and there were no cases reviewed in which a Legal Document Preparer was assisting a client; therefore, Required Corrective Action No. 4 can be closed.

The Report also indicated that there were cases that were reported to LSC where an individual who was not an attorney or paralegal was providing assistance to clients at a DNA Volunteer Tax Assistance Program.

The FUR demonstrated that DNA is no longer using unauthorized individuals to provide legal services and there were no cases reviewed in which unauthorized individuals were assisting clients; therefore, Required Corrective Action No. 5 can be closed.

In response to the DR, DNA offered no comments on this Finding.

Finding 10: Sampled cases evidenced that DNA's application of the CSR case closure categories are consistent with Section VIII and IX, CSR Handbook (2008 Ed.). No further corrective action is required from the 2010 CSR/CMS Report.

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

The Report found that DNA's application of the CSR case closure codes were inconsistent with Section VIII and IX, CSR Handbook (2008 Ed.).

The FUR revealed that the files reviewed demonstrated that DNA's application of the CSR case closing categories is consistent with Chapters VIII and IX, CSR Handbook (2008 Ed.). There were 13 instances of case closing code errors. *See* Case No. 09E-13025075 which is a 2009 case that was closed with the closing code "B" (Limited Action), but closing code "F" (Negotiated Settlement Without Litigation) is the applicable closing code because the program succeeded in negotiating with the bank in dismissing its eviction case against the client. *See also* Case No. 08E-2004502 which is a 2010 case that was closed with the closing code "I(a)" (Uncontested Court Decision), but closing code "L" (Extensive Service) is the applicable closing code because the client disappeared after the program had filed pleadings on the client's behalf and the program was forced to request an order of withdrawal from the case. *See also* Case No. 08E-9022176 which is a 2010 PAI case that was closed utilizing the closing code "A" (Counsel and Advice). The case notes indicate that the private attorney represented the client in a divorce proceeding that was contested by the opposing party. A judgment was entered in the client's favor. Closing code I(b) (Contested Court Decision) is the more applicable closing code. *See also* Case No. 08E-9019147 which is a 2010 PAI case that was closed utilizing the closing code "F" (Negotiated Settlement Without Litigation). The case notes indicate that the private attorney represented the client in a divorce proceeding and negotiated a stipulated settlement agreement between the client and the adverse party, which was later accepted by the court and filed in the court action. Therefore, closing code "G" (Negotiated Settlement With Litigation) is the applicable closing code). *See also* Case No. 06E-5015738 which is a 2010 case that was closed with the closing code "B" (Limited Action), however, ongoing assistance was provided to the client in a divorce proceeding lasting several years. Closing code "L" is the more applicable closing code. *See also* Case No. 09E-9026602 which is a 2010 case that was closed with the closing code "A" (Counsel and Advice). The advocate assisted the client in drafting a pro se answer. Closing code "B" (Limited Action) is the applicable closing code. *See also* Case No. 07E-5016391 which is a 2010 case where a court case was closed as "A" (Counsel and Advice). *See also* Case No. 10E-5029466 which is a 2010 case that was closed as "A" (Counsel and

Advice) where the advocate sent a letter to a creditor on the client's behalf. Closing code "B" (Limited Action) is the applicable closing code. *See also* Case No. 11E-3031850 which is a 2011 case where a client received advice only; however the case was closed as "B" (Limited Action). Closing code "A" (Counsel and Advice) is the applicable closing code. *See also* Case No. 10E-3030183 which is a 2010 case that was closed as "B" (Limited Action) where the client was provided with an advice letter and a blank form to complete. Closing code "A" (Counsel and Advice) is the applicable closing code. *See also* Case No. 10E-3026805 which is a 2010 case that was closed with the closing code "B" (Limited Action). The client was mailed an advice letter and a blank Power of Attorney self-help packet. Closing code "A" (Counsel and Advice) is the applicable closing code. *See also* Case No. 08E-8022366 which is a closed 2010 case that was closed with the closing code "A" (Counsel and Advice). DNA conducted extensive work trying to get the client's military designation changed from "AWOL" to missing in order to obtain benefits for client. Closing Code "L" (Extensive Service) is the applicable closing code. *See also* Case No. 06E-2002528 which was closed with closing code "A" (Counsel and Advice). The attorney contacted a third party on the client's behalf. Closing code "B" (Limited Action) is the applicable closing code. *See also* Case No. 07E-2003515 which is a closed 2009 case that was closed with the closing code "A" (Counsel and Advice). A letter was sent by a DNA attorney to a third party on the client's behalf. Closing code "B" (Limited Action) is the applicable closing code.

Inasmuch as the FUR demonstrated that DNA demonstrated significant improvement with the application of the closing codes no further corrective action is required. However, it is recommended that DNA continue to educate staff regarding the appropriate usage of LSC closing codes.

In response to the DR, DNA offered no comments on this Finding.

Finding 11: Sampled cases evidence substantial compliance with the requirements of CSR Handbook (2008 Ed.) § 3.3. Therefore, Required Corrective Action No. 6 from the 2010 CSR/CMS Report can be closed.

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, limited action, 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, limited action, or referral was provided.⁸ 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 (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

⁸ The time limitation of the 2001 Handbook that a limited action 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).

unnecessary, not possible, or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed.), § 3.3(b). Additionally LSC regulations require that systems designed to provide direct services to eligible clients by private attorneys must include, among other things, case oversight to ensure timely disposition of the cases. *See* 45 CFR § 1614.3(d)(3).

The Report found DNA to be non-compliant with CSR Handbook (2008 Ed.) § 3.3. due to several reviewed cases being untimely closed. Required Corrective Action No. 6 directed DNA to ensure that staff is trained regarding the timely closing of cases.

The FUR indicates that DNA has significantly improved and is in substantial compliance regarding the requirements of CSR Handbook (2008 Ed.), § 3.3(a) as there were only three (3) case files reviewed that were not closed in a timely manner. *See* Case 06E-2002528, a closed 2009 case that was opened on February 28, 2006 and closed on January 5, 2009. The last documented work in the file was in June 2006. This case should have been closed and reported in 2006. *See also* Case No. 04E-2001365 which is an open case where the last activity was documented in 2004 and there is no additional documentation in the file indicating the reason this case has remained open. This case should be administratively closed in such a manner as to ensure it is not reported in future CSR data. *See also* Case No. 08E-2003954 which is a closed 2010 case that was open from March 11, 2008 until December 31, 2010. There was no activity in the case in 2009 and a closing letter was sent to the client in 2010. This case should have been closed and reported in either 2008 or 2009.

Inasmuch as the FUR demonstrated that DNA demonstrated significant improvement with the timely closing of cases, Required Corrective Action No. 6 can be closed.

In response to the DR, DNA offered no comments on this Finding.

Finding 12: Sampled cases evidenced compliance with the requirements of 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 (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 (2008 Ed.), § 6.2.

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

further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed.), § 6.4.

DNA is in compliance with the requirements of CSR Handbook (2008 Ed.), § 3.2 regarding duplicate cases as there were no duplicate case files noted in the review sample.

In response to the DR, DNA offered no comments on this Finding.

Finding 13: Review of the recipient’s policies and the list of attorneys who have engaged in the outside practice of law, revealed that DNA is in compliance with the requirements of 45 CFR Part 1604 (Outside practice of law).

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

Based on the review of the recipient’s policies and the list of attorneys who have engaged in the outside practice of law, DNA is in compliance with the requirements of 45 CFR Part 1604.

In response to the DR, DNA offered no comments on this Finding.

Finding 14: DNA continues to make all the payments for its Flagstaff purchased office building using LSC funds and these payments remain in excess of the rental cost of its prior Flagstaff office building. As of June 28, 2011, DNA entered into a property agreement with LSC. This agreement provides LSC with a reversionary interest in the building.

The 2010 Report documented the 2007 purchase of real property in Flagstaff, Arizona. As indicated in the report DNA paid the note payments on the property with LSC funds; however, it did not obtain prior LSC approval, as required.

Subsequent to the Report, on October 13, 2010, OCE sent DNA a Notice of Questioned Costs pursuant to 45 CFR. Part 1630. The Notice questioned, in part, expenditures of \$200,947.41 in LSC funds made for mortgage and maintenance expenses related to a building DNA purchased without having requested or received prior approval from LSC for the purchase, as required by 45 CFR Part 1630 and the LSC Property Acquisition and Management Manual (“PAMM”).

DNA submitted a supplemental response on December 9, 2010 addressing the property matter. On January 13, 2011, OCE issued a Management Decision pursuant to 45 CFR § 1630.7(d) disallowing the costs questioned in the October 13 notice. On February 28, 2011, DNA filed an appeal pursuant to 45 CFR § 1630.7(e).

On March 30, 2011, LSC issued a ruling on DNA's appeal entitled DNA Appeal Decision (DAD) which questioned costs for the purchase in the amount of \$22,701.57 which was the difference between the mortgage and monthly payments on the purchased building and the prior lease costs of the building DNA previously occupied for the period from January 2008 through January 2011. DNA was advised that any payment with LSC funds of any amount in excess of the prior rental cost is not supported by the necessary documentation and if it continued this practice, it may be subject to future questioned cost proceedings.

During the FUR it was determined that DNA continues to make all of its payments for the Flagstaff office building using LSC funds. These payments include mortgage, interest, common area maintenance fee, and real estate taxes.

A comparison of the prior rental cost of \$5,102 per month to the purchased building costs from January 2009 through June 30, 2011 revealed that over this period DNA had spent an additional \$26,948.87 as a result of purchasing the Flagstaff office building.

It is noted that as of June 28, 2011, DNA has entered into a property agreement with LSC. This agreement provides LSC with a reversionary interest in the building. A copy of the filed document was received by LSC on September 7, 2011.

In response to the DR, DNA offered no comments on this Finding.

Finding 15: DNA should adopt a policy or procedure to monitor the professional income of its contract attorneys.

Corrective Action No. 8 from the 2010 Report required that DNA provide an explanation regarding the professional income of the contract attorney in the Farmington office in order to determine whether this contract attorney (and therefore their cases) qualifies as charged to, and designated as, PAI.

In response to the original Draft Report from the prior visit, DNA stated its Farmington contract attorney bills the program at a rate of \$85 per hour (and only \$40 per hour for traveling time). DNA stated this represents less than half of the contract attorney's customary hourly billing rate and that the average hourly billing rates in DNA's service area was \$175 per hour. DNA concluded that, therefore, this attorney is a PAI attorney under the definition of 45 CFR § 1614.3(e)(3) which states, attorneys' fees paid may not exceed 50% of the local prevailing market rate for that type of service.

The response by DNA failed to address the issue as to whether the Farmington PAI attorney meets LSC's definition for a staff attorney. 45 CFR § 1614.1(d) states that the term private attorney, as used in Part 1614, is "an attorney who is not a staff attorney as defined in §1600.1 of these regulations." 45 CFR §1600.1 states, staff attorney means an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

Interviews revealed that the staff attorney under consideration had earned \$55,215 for her PAI work with DNA in 2009, \$72,596 in 2010, and \$40,038 from January 1, 2011 through July 15, 2011. According to the contract attorney, her income from DNA constituted slightly less than half of her total professional income for those periods and she did not meet the LSC definition of a staff attorney under 45 CFR §§ 1600.1 and 1614.1(d). Nonetheless, due to the significant amount of PAI allocation for this one (1) attorney, DNA should also indicate how the attorney's income information was verified.

Furthermore, DNA should add language to its contracts with private attorneys which explains the regulatory definition of staff attorney and requires that the attorney notify the program should they meet the definition of a staff attorney. Finally, DNA should put in place a set of procedures to verify that the money it pays to its contract attorneys does not represent over half of their professional income when the amounts paid are significantly high.

In response to the DR, DNA indicated it will add language to the contracts of PAI attorneys explaining the definition of a staff attorney, and their obligation to notify them if their DNA income begins to approach one-half of their total income. Furthermore, DNA indicated it will create a procedure whereby they will check with contract attorneys about their quarterly income, and compare it to the amounts DNA has paid them during that quarter.

Finding 16: DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases; compliance is noted with 45 CFR Part 1614 (Private attorney involvement) in that DNA has created a PAI Plan, PAI expenses are adequately supported, and the program's PAI expenditures exceeded the 12.5% regulatory requirement for each year during the review period. However, DNA is underreporting certain PAI Expenses which results in an understated PAI ratio.

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

Activities undertaken by the recipient to involve private attorneys in the delivery of legal assistance to eligible clients must include the direct delivery of legal assistance to eligible clients. The regulation contemplates a range of activities, and recipients are encouraged to assure that the market value of PAI activities substantially exceed the direct and indirect costs allocated to the PAI requirement. The precise activities undertaken by the recipient to ensure private attorney involvement are, however, to be determined by the recipient, taking into account certain factors. *See* 45 CFR §§ 1614.3(a), (b), (c), and (e)(3). The regulations, at 45 CFR § 1614.3(e)(2), require that the support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. The term "private attorney" is defined as an attorney who is not a staff attorney. *See* 45 CFR § 1614.1(d). Further, 45 CFR § 1614.3(d)(3) requires programs to implement case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the results desired by the client and the efficient and economical utilization of resources.

Recipients are required to develop a PAI Plan and budget. *See* 45 CFR Part 1614.4(a). The annual plan shall take into consideration the legal needs of eligible clients in the geographical area, the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet legal needs, and the results of consultation with significant segments of the client community, private attorneys and bar associations, including minority and women's bar associations. The recipient must document that its proposed annual Plan has been presented to all local bar associations and the Plan shall summarize their response. *See* 45 CFR §§ 1614.4(a) and (b).

A review of DNA's payments to the contract attorney referenced above showed that only \$1,511 of the \$72,596 she received from DNA in 2010 was included in the program's Audited Financial Statement ("AFS") in the Summary of PAI Involvement schedule. This represents the portion of her payments from DNA that was paid using LSC funds. However, DNA reported all the casework from this attorney as PAI. Additionally, it was determined that another contract attorney received \$21,462 for casework from DNA in 2010. Likewise, none of those payments were included in the 2010 AFS Summary of PAI Involvement because they were paid with non-LSC funds. DNA was not reporting non-LSC funds utilized for these payments. Had the program included the non-LSC PAI payments to these two (2) attorneys in its PAI schedule, its 2010 PAI ratio would have been over 23.12 percent rather than the 12.75 percent calculated using the numbers from the AFS' Summary of PAI Involvement schedule. 45 CFR § 1614.3 (e) (2) requires that support and expenses relating to the PAI effort must be reported separately in the recipients' year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation.

DNA must ensure that all its PAI expenses are accurately reported. Also, going forward, the program must be consistent in its reporting of PAI cases between the CSR and financial reporting of PAI expenditures in its AFS.

In response to the DR, DNA indicated that it is using a consultant to assist in updating its accounting software along with revamping its procedures to use the software more completely, creating more useful financial reports, and providing intensive training to its accounting and administrative staff.

DNA's General PAI Referral and Oversight

DNA conducts PAI in its Flagstaff and Farmington branch offices. In Flagstaff PAI is strictly *pro bono*, whereas, in Farmington DNA utilizes a combination of *judicare* and *pro bono* volunteer program to fulfill the PAI effort. During the on-site review, the PAI Coordinator and Administrative Assistant in Flagstaff and the Managing Attorney in Farmington were interviewed.

Cases appropriate for referral to the contract/volunteer attorneys are identified during routine case acceptance meetings; prior to the case being presented at the case acceptance meeting, applicants have been fully screened for income/asset and citizenship eligibility and a conflict/duplicate check has been conducted. The referred cases are provided to the PAI coordinator who changes the coding in the ACMS, makes a copy of the file documents and

reviews the mailed referral letters to the client and attorney. The primary types of cases referred are divorce, bankruptcy, domestic violence, custody, and support.

Following the referral, cases are tracked by the individual PAI coordinator. If the responsible attorney does not send in an invoice or status report, the PAI coordinator sends a frequent case status report to the attorney, who is requested to provide a status report update in a timely manner. Interviews revealed that both the contract attorneys and the volunteer attorneys provide routine status updates to the PAI coordinator, and timely submit case closure information, including final orders, granted orders of withdrawal, etc., once assistance has ceased. At case conclusion, the private attorneys send the closing letter to the client and a copy to the PAI coordinator. Once the case closure letter is received by the PAI coordinator, the applicable closing code is assigned by the Managing Attorney or Administrative Director using case closing checklist. Once the case closure code has been determined, the cases are then closed on the ACMS by the PAI coordinator.

DNA is in compliance with 45 CFR § 1614.3(d)(3) which requires oversight and follow-up of the PAI cases.

PAI Case Review

As stated in Finding 1, there were six (6) case files reviewed that were designated as Flagstaff PAI cases, however, these cases should have been closed as staff cases since the only sufficient legal advice documented in the file was by DNA's staff attorney. These were bankruptcy cases where the PAI attorney agreed to provide consultation to the client. If the client decided to proceed with a bankruptcy, the PAI attorney would represent the client for a fee. The extended service portion of the case is not reported to LSC. The only documentation by the PAI attorney was that they "consulted the client on bankruptcy." No additional information was documented in the file indicating how the PAI attorney applied the law to the client's specific facts. *See* Case Nos. 10E-13030573, 11E013031370, 11E-13030769, 10E-13029966, and 09E-13025869.

The PAI attorney must document how he/she applied the law to the client's specific facts in order to count and report these cases to LSC as PAI cases.

As stated in Finding 1, DNA offered no comments on this issue.

Finding 17: DNA is using LSC funds to pay bank fees associated with its general operating account. Additionally, the entire fee is charged to LSC funds rather than LSC's proportional share of that account.

DNA maintains its general operating account through the local branch of a commercial bank. The account is considered a commercial account into which DNA deposits funds from its various funding sources, including LSC. According to DNA's Detail General Ledger (GL), under the Miscellaneous Expenses, there is a monthly fee paid by DNA to the commercial bank for maintaining this bank account.

Further review of DNA's bank statements for this account revealed that these fees are for "account analysis" which is a monthly usage based service charge for various banking services. On the bank statement these fees are detailed under the categories of General Account Services, Depository Services, Paper Disbursement Services, General Automated Clearing House (ACH) Services, Wire and Other Funds Transfer Service, and Information Services. The bank determines the fees over the course of a monthly statement cycle and then partially reduces these fees with an offset based on the value of DNA's deposit balances. In response to OCE's inquiries during the FUR the bank indicated, in part, that the cost of services for DNA has gone up somewhat over the last four (4) years - from \$348 to \$585 per month - because of the extreme decline in the value of DNA's deposits.

The fees paid by DNA from January 2009 through June 2011 revealed that the lowest fee of \$337 was paid in January 2009 and the highest fee of \$663 was paid in June 2011. During the review period DNA paid a total of \$13,423 in account analysis fees to this bank. As stated previously, this account includes LSC money as well as other funds from DNA's various funding sources. DNA's Fiscal Manager determined that in June 2011, approximately 52 percent of the money in its general operating account was LSC funds. However, DNA is paying for the entirety of the account analysis fees with LSC funds.

45 CFR § 1630.3(b) (Standards governing allowability of costs under Corporation grants or contracts – Reasonable costs) states, in part, that a cost is considered reasonable, if in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. The payment of \$13,423 bank account analysis fees during the review period does not appear to be a prudent usage of LSC funds. Further, using LSC funds to pay the entire analysis fee for an account that is only partially comprised of LSC funds is not reasonable. Each funding source which has money in DNA's general operating account should be assessed its proportional share.

DNA should search for a suitable bank account to meet its needs without fees, or if one is not available, then one with significantly lower fees. If the program determines it must pay a bank fee for its general operating account, the fee should be distributed proportionately among the various funding sources with funds in the account. LSC funds should only be used for the proportion of LSC funds in the account.

The DR directed DNA provide an update as to whether they have found a bank account with lower or no fees. Additionally, DNA was directed to include an analysis covering each month over the five (5) year period from July 1, 2006 through June 30, 2011 which provides: 1) the monthly account analysis fee DNA paid to its bank; 2) the amount of the fee that was paid using LSC funds; and 3) the percentage of the balance in its general operating account each month that was comprised of LSC funds.

In response to the DR, DNA indicated that its current bank, Wells Fargo, refused to reduce DNA's monthly fees. According to DNA, they reviewed every item that was charged and were able to delete several of them which resulted in a monthly savings of approximately \$200.00. Furthermore, DNA indicated it is obtaining proposals from other banks in the area that will charge little or no cost for a similar type of account.

Additionally, DNA enclosed a spreadsheet of the monthly accounting fees charged during the noted five (5) year period, as well as the percentage of the balance that was comprised of LSC funds. DNA stated that such information would be used to apportion the appropriate percentage of bank fees to all funds.

Finding 18: DNA has established effective internal controls in support of its credit card account. DNA maintains sufficient supporting documentation for all charges and the program incurs no finance charges associated with this account.

DNA maintains a corporate credit card to pay for business expenses of its authorized users. Cardholders are required to submit documentation in support of their purchases and the charges are to be divided by fund codes. Limited testing of charges incurred during the review period revealed that DNA maintained supporting receipts associated with all charges reviewed. A review of DNA's credit card statements during the review period revealed that the program paid off the balance in full each month and incurred no finance charges.

In response to the DR, DNA offered no comments on this Finding.

Finding 19: DNA has recognized the liability of the Questioned Cost amount of \$147,271.15, posting it to the General Ledger effective December 31, 2010. The liability and its source as a questioned cost are set forth in the DNA 2010 audited financial statements. Therefore, Required Corrective Action No. 9 from the 2010 CSR/CMS Report can be closed.

The Report detailed that from July 2008 through September 28, 2009, DNA implemented a "test work week policy" which allowed up to 22 employees to reduce their workweek to 32 hours per week while continuing to receive a salary based on a 40 hour workweek. The payroll timesheets prepared by the employees accurately reported their actual work hours as 32, however the payroll reports reflected payment for 40 hours. The Temporary Workweek Policy Test was terminated by memorandum of August 20, 2009 from DNA's Executive Director, citing the test as failing to meet the needs and concerns of the community.

This process resulted in DNA failing to follow policies established in the DNA Policies and Procedures Manual, LSC's Accounting Guide for LSC Recipients, and OMB Circular A-122. As a result, LSC issued a Questioned Cost Management Decision disallowing \$147,271.15 paid for the un-worked hours pursuant to the DNA Temporary Workweek Policy. This figure reflects the total cost of the eight hours each week for which the covered employees were paid in excess of the 32 hours per week they actually worked. The Management Decision was based on a determination that the costs were not appropriate nor adequately documented as required by 45 CFR § 1630.2(g)(2).

DNA appealed this decision and, on March 30, 2011, LSC's President concluded that the appeal was insufficient to demonstrate that: (1) the required documentation standards were followed; (2) the Temporary Workweek Policy was a justified salary increase; and (3) that the Board of DNA approved the policy before it was implemented. The LSC President further noted that

the Temporary Workweek Policy resulted in a significant reduction in client access to DNA's services during the period when the policy was in effect and therefore confirmed the Management Decision to disallow of \$147,271.15 in costs.

Pursuant to the above finding, DNA recorded in its general ledger the disallowed costs as a liability due LSC as of December 31, 2010. The liability and its source as a questioned cost are reflected in DNA's 2010 annual audit.

Required Corrective Action No. 9 from the Report can be closed.

In response to the DR, DNA offered no comments on this Finding.

Finding 20: Timeliness and accuracy in bank reconciliations has been only partially implemented. The DNA *Accounting Procedures Manual* is out of date and does not adequately define the reconciliation process and responsibilities for all financial accounts. It is noted that the Morgan-Stanley investment account was not timely reconciled; the reconciliation function incorporated in the Programs accounting software has not been utilized; and un-cleared checks dating as far back as 2007 have not been properly voided. DNA has failed to fully implement Required Corrective Action No. 7, therefore it remains open.

The Accounting Guide for LSC Recipients (2010 Edition) defines the LSC Fundamental Criteria, which is a listing of the elements of an adequate accounting and financial reporting system. Applicants agree to comply with both substantive and procedural requirements, including the recordkeeping and reporting requirements.

The Accounting Guide for LSC Recipients (the 2010 Edition has been significantly revised), Part 3-5, Fundamental Criteria, provides guidance on aspects of fiscal operations and provides guidance to programs on how accounting procedures and internal control can be strengthened and improved with the goal of eliminating, or opportunities for fraudulent activities to occur. Key Element 3-5.2(d) Reconciliations, requires that: 1) bank statements shall be reconciled monthly to the general ledger by a person who has no access to cash, who is not a regular check signer, and has no cash bookkeeping duties; 2) the reconciliation shall be reviewed and approved by a responsible individual. Such review shall be appropriately documented by signature and date; and 3) all required adjustments to the general ledger cash account identified through the reconciliation procedure should be recorded in the general journal and promptly posted to the general ledger.

The 2010 Report indicated that bank reconciliations for the operating and payroll accounts were not dated upon approval/certification, and not approved by the Executive Director. The bank reconciliations for the investment account were not reconciled on a timely basis nor were they certified and dated by the Executive Director. The bank reconciliations for the client trust and litigation accounts were not accurately prepared since they do not reconcile back to the general ledger balance for the reporting period. Corrective action was required.

Review of the DNA Accounting Procedures Manual found it was approved and issued on March 30, 1990, and has only had minimal changes since that time. It is functionally deficient in providing direction towards compliance with the Accounting Guide for LSC Recipients (2010 Edition) and optimal use of the Program's current accounting software. An example of deficient internal controls is the requirement that bank statements be directly received by the accounting staff. It was noted however, that having previously been made aware of this deficiency, DNA has in fact changed the process to have the Executive Director receive and review bank statements, though it has not defined the process in its policy manuals.

Test sampling of the bank reconciliations for the Operating and Payroll accounts found that currently the reconciliations were done timely, signed by the preparer, signed/dated by the reviewer (Executive Director), and accurately reconciled to the GL. However, review of the reconciliations noted that, though the computer generated check listings used for this purpose was headed "Check Reconciliation-Standard" and listed checks in numerical order, none of the checks were reflected as "cleared." Instead, a manual check mark was next to check numbers to indicate cleared items and un-cleared items had been highlighted. The actual reconciliation was prepared manually, hand listing outstanding checks or un-posted deposits not reflected on the bank statement, and comparing the total to the GL balance.

It was also found that checks listed as outstanding in the operating account dated as far back as 2007. The Accounting Procedures Manual, as part of the reconciliation process, requires that old outstanding checks be investigated and subjected to proper disposition. Clearly this action has not been taken for an extended period of time. Failure to clear these checks can lead to misreporting of asset and liability account balances. The 2010 DNA AFS noted, on page 31, a finding that, "multiple stale-dated checks were outstanding on the bank reconciliations." This finding had not been corrected.

DNA maintains an investment account at Morgan Stanley which utilizes diverse investments in global market money funds and certificates of deposit. This account is not timely posted or reconciled to the GL. For example, the DNA Balance Sheet for May 31, 2011, reflects the value of the investment account as \$1,239,906.94, while the statement reflects an adjusted net value of \$1,241,339.77.

Queries found that DNA staff did not have the knowledge or training to properly utilize the available bank reconciliation software. Staff recognized their lack of expertise in the Program accounting software (Microsoft Dynamics SL) and depended extensively for assistance from a contractor who was able to access their system from a remote location.

Although there has been some improvement with the timeliness and accuracy of the bank reconciliations to the GL, DNA has failed to fully implement Required Corrective Action No. 7, therefore it remains open.

In response to the DR, DNA indicated it is currently updating the procedures in its Accounting Procedures Manual to be consistent with the General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients. As stated above, DNA indicated that it is using a consultant to assist in updating its accounting software along

with revamping its procedures to use the software more completely, creating more useful financial reports, and providing intensive training to its accounting and administrative staff.

Finding 21: DNA has not taken steps to limit liability in making salary advances by limiting or restricting the practice within the policies in the Accounting and Personnel Manuals.

The Report identified an account designated “Salary Advance” which was used to advance funds to a contractor who provided cleaning services at the Flagstaff office. It appears the term “Salary Advance” was inappropriate under the circumstances. It was recommended that the Program consider updating its Personnel Policies to include salary advances.

A limited review of program cash disbursements, from January 2010 through May 2011, found no advances to employees. This was confirmed by the Executive Director, who indicated that DNA does not have a policy regarding salary advances since the program does not grant them. Not granting salary advances is in itself a policy and should be incorporated in the DNA Personnel Policies and Procedures Manual.

As stated previously, DNA indicated it is currently revising its Accounting Procedures Manual. According to DNA the updated version will say that salary advances are prohibited. Additionally, DNA indicated it will also update its Personnel, Policies, and Procedures Manual to reflect the same.

Finding 22: DNA received attorneys’ fees in a single case during June 2010. In accordance with 45 CFR § 1609.4, these funds were credited in the general ledger as LSC derivative income. However the DNA 2010 audited financial statement reflected this income as unrestricted non-LSC funds. A written request for information regarding this (and other items reflected in the audit) was made by LSC on June 7, 2011, requiring a response by July 7, 2011. The Program had failed to respond at the time of the FUR.

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).

Due to regulatory changes, LSC has also prescribed certain specific requirements for fee-generating cases in Program Letter 10-01 Supplemental Guidance on Attorneys’ Fees, LSC will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys’ fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys’ fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and

enforcement action. The regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

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).

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

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

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

None of the sampled files reviewed contained a prayer for attorneys' fees. However, a review of program receipts for the period January 2009 through May 2011, identified receipt of a single attorneys' fee of \$3,600 (and \$114.13 in travel costs) in June 2010, resulting from a labor commission case which had to be enforced by a district court action. The Deposit Transaction sheet reflects the attorneys' fee being credited to account 4505/201100 (Income Grant Attorney Fees/ LSC Native American).

A review of the DNA 2010 annual AFS reflects the \$3,600 attorney fee as "unrestricted revenue" and as non-LSC other revenue.

By letter of June 7, 2011, LSC questioned several items on the DNA 2010 AFS, including the derivation of the attorneys' fee in question. A response date of July 7, 2011, was stated.

As of October 14, 2011 DNA had not responded to the LSC inquiry. During the FUR, the Program Fiscal Manager stated that she could not state why the audit reallocated the received attorneys' fee and in order to respond she required a response of the audit firm, which she had yet to receive.

DNA was directed to submit all information requested in LSC's June 7, 2011 letter with its comments to the DR.

In response to the DR, DNA's auditor indicated that the issue over the misclassification of attorneys' fees as derivative income in non-LSC funds was an oversight in the financial statement preparation. DNA further stated that its auditor concluded that no restatement needs to be made, but the error will be corrected in the 2011 financial statements. According to DNA, its revised Accounting Procedures Manual will address the attorney fee issue to avoid future errors in records keeping.

Finding 23: DNA documentation indicates general compliance with the requirements of 45 CFR Part 1635 – Timekeeping. The timekeeping for case handlers is being kept electronically and contemporaneously by case, matter or supporting activities utilizing Kemp's Prime. Though the process is not fully documented in DNA Accounting and Personnel Policies and Procedures, this data is utilized to allocate time by fund source for payroll purposes and is utilized for direct and indirect funding allocation.

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.

The Program is in general compliance with the requirements of 45 CFR Part 1635. The DNA Accounting Procedures Manual states generally, that "Account distributions of wages and salaries and controlling liabilities for payroll deductions and taxes withheld are made in

accordance with the established chart of accounts”, and the DNA Personnel Policies and Procedures Manual, Part XXII, Timekeeping Requirements, states that attorneys, advocates, paralegals, law clerks and trainees maintain their time on Kemp’s Prime and use that data to their biweekly timesheets for payroll purposes.

A limited test for the month of May 2011 (pay periods ended May 6 and May 20, 2011) found that all 76 staff members had submitted completed signed and approved biweekly timesheets reflecting actual hours worked and funds to which they were charged. The review determined a timely filing of timesheets. DNA staff was advised not to submit incomplete timesheets with the ending note: “No Timesheet, no paycheck.”

In response to the DR, and as stated previously, DNA indicated it is revising its Accounting Procedures Manual and Personnel, Policies, and Procedures to include more specifics about using CMS time slips for payroll purposes, and the review now required by managing attorneys before payroll sheets are submitted.

Finding 24: The DNA Accounting Procedures Manual does not adequately define administrative internal controls or significant fiscal processes. Additionally, the specific structure, functions and report generation capabilities of the accounting software being utilized does not meet the requirements of LSC Grant Assurances, LSC Regulations and the Accounting Guide for LSC Recipients.

Cost Allocation System - LSC's rules regarding allocations among funds are set forth in 45 CFR Part 1630. Additionally, some functional programs such as the PAI have specific requirements such as the recipient's administrative, overhead, staff, and support costs related to PAI activities shall be allocated on the basis of reasonable operating data, while direct costs must be based on contemporaneous time recordings.

The DNA Accounting Procedures Manual has only a general reference requiring the adherence to the (now outdated) Accounting Guide for LSC Recipients issued by LSC (August 1997). The current document does not adequately define processes or procedures to allocate costs among fund sources and needs to be revised to adequately define the process, timeline and responsibility for developing and updating a Program Cost Allocation System.

Derivative Income – DNA’s Accounting Procedures Manual does not appear to contain any specific procedures relating to the allocation of derivative income. 45 CFR § 1630.12 requires that derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the activity. In addition to such items as interest income, income from functional activities supported by LSC funding (i.e. clinics, trainings, fund raising, etc.) must be recorded as derivative income.

Internal Controls and Documentation – The DNA Accounting Procedures Manual dates from March 1990, with some limited updates. It does not meet current LSC standards as articulated in the Fundamental Criteria. As noted in previous fiscal findings, the Accounting Manual does not

provide guidance sufficient to instruct a staff member as to LSC guidelines and the steps required to successfully meet those guidelines.

DNA should use Appendix VII Accounting Procedures & Internal Control Checklist of the Accounting Guide for LSC Recipients (2010 Edition) as a structural basis and a document review checklist for completion of an update of their Accounting Manual.

In response to the DR, and as stated previously, DNA indicated it is currently updating the procedures in its Accounting Procedures Manual to be consistent with the General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients. Also, as stated above, DNA indicated that it is using a consultant to assist in updating its accounting software along with revamping its procedures to use the software more completely, creating more useful financial reports, and providing intensive training to its accounting and administrative staff.

DNA indicated it will provide LSC with a copy of its updated Accounting Procedures Manual upon completion.

Finding 25: DNA is in compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.

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 and detailed general ledger for the period January 2010 through May 31, 2011 disclosed that DNA is in compliance with 45 CFR § 1627.4(a). It was noted that DNA did maintain a membership in NLADA; however, in 2010 funds expended for those fees came from unrestricted donations.

In response to the DR, DNA offered no comments on this Finding.

Finding 26: A cash disbursement review for the period January 1, 2010 through May 31, 2011, indicates DNA is in general compliance with the parts of 45 CFR Part 1630.

A cursory review was made of the over 2,700 disbursements from DNA's operating bank account for the period January 1, 2010 through May 31, 2011. Twenty (20) payees were selected for follow-up review. Based on this review, there were no indications of systemic failure to perform within the guidelines established by specific parts of 45 CFR § 1630.

During the test, it was determined that all checks for the period (by sequential number) were accounted for as either drawn or void. All payment detail requested was promptly retrieved and provided and included a voucher copy of the check, check request/approval, and appropriate coding identifying the COA account to be posted and fund source to be charged. This indicated systemic conformance with the requirements of 45 CFR § 1630.3 (a)(9), to maintain costs in adequate and contemporaneously prepared business records.

The disbursement review identified payments to equipment suppliers in amounts exceeding the \$10,000 limit which under 45 CFR § 1630.5 (b), would require prior approval if the purchase was an individual item. Examination of purchase invoicing determined that in no case did an individual item of purchased property meet the cost level requiring prior purchase approval.

During 2009/2010, DNA acted as counsel for the Navajo Nation to ensure appropriate legal representation of Navajo Tribal members in a legal action in the state of Texas. In furtherance of that matter, the Navajo Nation advanced funds to DNA. On completion of the matter, after paying retained outside counsel and related expenses, the balance of the funds, \$190,000.00, were returned to the Navajo Nation along with interest earned of \$2,326.78. These funds were deposited to and expenses paid from the DNA operating account; however, the more appropriate action would have the funds placed in a client trust account and withdraw as necessary. Expenditure of these funds was appropriately listed as tribal funds used for the specific purposes for which they were provided.

In response to the DR, DNA offered no comments on this Finding.

Finding 27: The accounting software currently in use by DNA may not be suitable for the corporate structure, geographic dispersion, and staff capabilities of the Program.

DNA began to use Solomon Accounting software when it converted from a manual system to computer based accounting in 1983. Several years ago, Solomon ceased to be a standalone product when it was purchased by Microsoft in 2001 and its various modules were incorporated into Microsoft Dynamics SL, a multi-faceted project or business management program. DNA has continued using the software, though its complexities have outpaced the skills of the fiscal staff. In an effort to maintain operations, DNA has contracted with a consultant skilled in the use of the software. The contractor, based in Phoenix, AZ, has on-line access to the Programs accounting system enabling him to directly assist staff in entries and report generation.

It is further noted that the new auditor who completed DNA's 2010 audited financial statement noted that, "...numerous material audit adjustments were required for the financial statement to be correct at year end." The errors, consisting of un-adjusted revenues and expenses including major grant revenue, required restating DNA's 2009 audited financial statements as well. Many of the errors resulted from allowing invoicing to be conducted outside the fiscal process.

It was found that, unlike most current accounting packages (fund based included), MS Dynamics SL has no integrated invoicing/receivables system. It was also noted that, unlike most integrated systems, the separation of modules within MS Dynamics SL requires that in order to perform

bank reconciliations one must first perform a series of data imports or merges.

As a result of its 2010 audit, DNA recognized a need for technical management assistance in fiscal operations and has secured a CPA on a consulting basis. It is also noted that as a result of the restatement of AFS for 2009 DNA needed to request a LSC waiver to expend \$116,374 in excess carryover asset balance for 2010. This was approved by LSC on June 6, 2011. The program proposal (among several) is to use the funds for software and equipment acquisitions to improve accounting functions and integration between accounting and timekeeping. LSC recommends that DNA change to software that is more suitable for the corporate structure, geographic dispersion, and staff capabilities of the program.

In response to the DR, DNA indicated, on the recommendation of two consultants, that it has purchased the Enterprise version of MS Dynamics which is an upgrade from the standard version. According to DNA, this version incorporates accounts receivable, accounts payable, and payroll, and allows for the seamless integration of all of DNA's processes. DNA indicated that the conversion to the new program should be complete by early 2012.

Finding 28: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).

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

None of the sampled files and documents reviewed evidenced any lobbying or other prohibited activities.

In response to the DR, DNA offered no comments on this Finding.

Finding 29: 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.

In response to the DR, DNA offered no comments on this Finding.

Finding 30: 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).⁹

None of the sampled files reviewed involved initiation or participation in a class action.

In response to the DR, DNA offered no comments on this Finding.

Finding 31: 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.

In response to the DR, DNA offered no comments on this Finding.

Finding 32: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).

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

None of the sampled files reviewed involved defense of any such eviction proceeding.

⁹ 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).

In response to the DR, DNA offered no comments on this Finding.

Finding 33: 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.

In response to the DR, DNA offered no comments on this Finding.

Finding 34: 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.¹⁰ This restriction has been contained in all subsequent appropriations acts.¹¹ 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.

In response to the DR, DNA offered no comments on this Finding.

Finding 35: 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. Nor may LSC funds be used to bring suit to assert, or

¹⁰ *See* Section 504(a)(18).

¹¹ *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).

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.

In response to the DR, DNA offered no comments on this Finding.

Finding 36: 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 DNA 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.

In response to the DR, DNA offered no comments on this Finding.

IV. RECOMMENDATIONS¹²

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

1. Develop a DNA Accounting Guide that meets current LSC standards;

In response to the DR, DNA indicated it is currently updating the procedures in its Accounting Procedures Manual to be consistent with the General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients.

2. Transition to an appropriate integrated fund based accounting software;

In response to the DR, DNA indicated, on the recommendation of two consultants, that it has purchased the Enterprise version of MS Dynamics which is an upgrade from the standard version.

3. Develop staffing assignments and job descriptions to meet internal control needs;

In response to the DR, DNA offered no comments on this Recommendation.

4. Ensure fiscal staff receives training in LSC requirements as well as technical training in utilization of the full scope of the software capabilities;

In response to the DR, DNA offered no comments on this Recommendation.

5. Incorporate into the Personnel Policies and Procedures manual, DNA's policy of not granting salary advances;

As stated previously, DNA is currently revising its Accounting Procedures Manual. According to DNA, the updated version will state that salary advances are prohibited. Additionally, DNA indicated it will also update its Personnel, Policies, and Procedures Manual to indicate the same.

6. Revise the manual intake form to include a screening for reasonable income prospects and conduct staff training on the necessity of screening for reasonable income prospects during the initial intake interview, pursuant to 45 CFR §1611.5(a)(4)(i), which mandates that DNA inquire into every applicant's reasonable income prospects during intake;

¹² 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.

In response to the DR, DNA offered no comments on this Recommendation.

7. Provide additional training to DNA intake staff on DNA's eligibility policy and the requirements of the CSR Handbook;

In response to the DR, DNA offered no comments on this Recommendation.

8. Train staff regarding the requirement to inquire into a group's means to obtain private counsel, pursuant to 45 CFR § 1611.6 (a), in conjunction with determining the group's eligibility for services;

In response to the DR, DNA offered no comments on this Recommendation.

9. Educate staff on the importance of obtaining and executing a valid retainer agreement prior to commencing extensive services; and

In response to the DR, DNA offered no comments on this Recommendation.

10. Educate staff regarding the appropriate usage of LSC closing codes.

In response to the DR, DNA offered no comments on this Recommendation.

V. REQUIRED CORRECTIVE ACTIONS

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

1. Ensure that all case files contain signed and dated citizenship attestations pursuant to 45 CFR Part 1626 and that the attestations comply with the requirements of CSR Handbook (2008 Ed.), § 5.5;

In response to the DR, DNA indicated that, on September 29, 2011, all staff attended an on-line training on citizenship requirements, where LSC regulations and corresponding policies were reviewed.

2. Ensure that the manual intake form used is revised to include a section regarding citizenship eligibility;

In response to the DR, DNA offered no comments on this Corrective Action.

3. Ensure staff verify citizenship eligibility during a telephone intake screening and obtain a signed citizenship attestation, or review alien eligibility documentation, during an in-person intake interview.

In response to the DR, DNA indicated that, on September 29, 2011, all staff attended an on-line training on citizenship requirements, where LSC regulations and corresponding policies were reviewed.

4. Ensure that staff has an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments.

In response to the DR, DNA indicated that on September 29, 2011, all staff attended an on-line training on citizenship requirements, where LSC regulations and corresponding policies were reviewed.

5. Remove defaults from the ACMS in the fields determined to be critical to eligibility, e.g. income, assets, number in the household, citizenship/eligible alien status, and LSC eligibility.

In response to the DR, DNA offered no comments on this Corrective Action.

6. Ensure that intake staff receives training regarding the requirement to inquire into a group's means to obtain private counsel, pursuant to 45 CFR Part 1611.6 (a), in conjunction with determining the group's eligibility for services;

In response to the DR, DNA offered no comments on this Corrective Action.

7. Include language in the PAI contracts of the regulatory definition of staff attorney and require that the PAI attorneys notify DNA of potential issues. Additionally, DNA should implement a policy ensuring that money paid to contract attorneys does not represent over half of the contract attorney's professional annual income;

According to DNA, it will add language to the contracts of PAI attorneys explaining the definition of a staff attorney, and their obligation to notify them if their DNA income begins to approach one-half of their total income. Furthermore, DNA indicated it will create a procedure whereby they will check with contract attorneys about their quarterly income, and compare it to the amounts DNA has paid them during that quarter.

8. Deposit funds into a bank account without fees, or if one is not available, a bank that has minimal fees. If a bank fee is paid, the fee should be distributed proportionately among the various funding sources that DNA receives money from which has been deposited into the account.

In response to the DR, DNA indicated that its current bank, Wells Fargo, refused to reduce DNA's monthly fees. According to DNA, they reviewed every item that was charged and were able to delete several of them which resulted in a monthly savings of approximately \$200.00. Furthermore, DNA indicated it is obtaining proposals from other banks in the area that will charge little or no cost for a similar type of account.

Additionally, DNA enclosed a spreadsheet of the monthly accounting fees charged during the noted five (5) year period, as well as the percentage of the balance that was comprised of LSC funds. DNA state that such information would be used to apportion the appropriate percentage of bank fees to all funds.

9. Develop an Accounting Manual which adequately defines administrative internal controls and significant fiscal processes in a manner necessary to meet the requirements of LSC Grant Assurances, LSC Regulations and the Accounting Guide for LSC Recipients (2010 Edition).

In response to the DR, DNA indicated it is currently updating the procedures in its Accounting Procedures Manual to be consistent with the General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients. Also, as stated above, DNA indicated that it is using a consultant to assist in updating its accounting software along with revamping its procedures to use the software more completely, creating more useful financial reports, and providing intensive training to its accounting and administrative staff.



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www.dnalegalservices.org
www.nativelegalnet.org

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

Dear Director Rath,

Please find attached DNA's comments to the LSC Draft Report for the on-site Follow-up Review. I appreciate the additional time to respond to the draft report and should you require additional information please contact me.

Thank you.

Sincerely,

/s/

Levon B. Henry
Executive Director



Finding 5: Sampled cases evidenced non-compliance with 45 CFR 1626.6 (Verification of citizenship). Therefore, Required Corrective Action No. 1 2010 CSR/CMS Report remains open.

§ 1626.6 Verification of citizenship says “(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.” The comments under Finding 5 state “Sampled cases evidenced two (2) case files that contained citizenship attestations that were not dated.” And “Finally, there was one (1) case where the citizen attestation was obtained two weeks after the client was seen in person for intake.”

There is nothing in the regulation which requires the signed citizenship attestation to be dated. DNA certainly recognizes the importance of, and trains its staff to get citizenship verifications from all applicants when we first see them in person, and that’s typically the day that we interview them in person (“the whites of their eyes” rule). With over 4,000 cases per year, that does not always happen, and we strive to remedy that situation as soon as we find it.

Of the 5 cases without a signed citizenship attestation, 4 of those were Native American, and we had their tribal Census numbers in our CMS. By operation of federal law, those clients are US Citizens. *We again request that LSC, rather than finding fault with DNA for not asking a Native American to verify that (s)he is a US Citizen with a signature (certainly an insult, considering Native Americans were here long before non-Indians), that it instead accept a Tribal Census Number as written verification that the applicant is a US Citizen.*

DNA began one-hour on-line training with all staff on various LSC eligibility and compliance topics. On 9/29/11, all staff attended an on-line training on citizenship requirements, where we reviewed the LSC regulation and DNA’s corresponding policy, and stressed that we needed to get citizenship signatures at the time we first see or starting representing the applicant.

Finding 15: DNA should adopt a policy or procedure to monitor the professional income of its contract attorneys.

DNA confirmed, via e-mail with all of our contract attorneys, while LSC was here for their visit, that the contractors’ income from DNA did not constitute more than half of their total annual income; the one contractor in question gave us her income figures for each year as she reported on her tax returns. We will add language to the few contracts with private attorneys we have, explaining the definition of a staff attorney, and their obligation to notify us if their DNA income begins to approach one-half of their total income. Assuming that self-employed individuals report income and pay taxes on a quarterly basis, DNA will create a procedure whereby we will check (via e-mail or other correspondence) with contract attorneys about their quarterly income, and compare it to the amounts DNA has paid them during that quarter.

Finding 16: ...However, DNA is underreporting certain PAI Expenses which results in an understated PAI ratio.

Using consultant Judy Arrigo, DNA is updating our accounting software, revamping our procedures to use the software more fully (including a function to track PAI expenses as we go), creating more useful financial reports, and providing intensive training to our accounting and administrative staff.

Finding 17: DNA is using LSC funds to pay bank fees associated with its general operating account. Additionally, the entire fee is charged to LSC funds rather than LSC's proportional share of that account.

DNA met with Wells Fargo about our commercial bank account, and they declined to reduce our fees. We carefully reviewed every item we are charged with, and deleted several of them, saving DNA over \$200 per month. We're obtaining proposals from Bank of America, and First American Credit Union, to do the same business (with an office reasonably close to our main office in Window Rock) for less, or no, cost.

Attached is a spreadsheet of the five year period which provides a monthly accounting of bank fees, the amount of the fee paid using LSC funds and the percentage of the balance that comprised LSC funds. With the information we anticipate apportioning the appropriate percentage of bank fees to all funds received by DNA.

Finding 20: Timeliness and accuracy in bank reconciliations.

DNA is presently rewriting its Accounting Procedures Manual to update our procedures, and to be in line with General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients. Using consultant Judy Arrigo, we are updating our accounting software, revamping our procedures to use the software more fully (including computerized reconciliation of all bank statements), creating more useful financial reports, and providing intensive training to our accounting and administrative staff.

Finding 21: DNA has not taken steps to limit liability in making salary advances by limiting or restricting the practice within the policies in the Accounting and Personnel manuals.

DNA is completely revising the Accounting Manual, which, in its draft form, specifically says that DNA does not approve salary advances. There is nothing in our Personnel Policies & Procedures manual about salary advances, because we do not do them. When we next update our Personnel manual, we will specify that we do not permit or approve this process.

Finding 22: DNA received attorneys' fees in a single case during June 2010. In accordance with 45 CFR 1609.4, these funds were credited in the general ledger as LSC derivative income. However the DNA 2010 audited financial statement reflected this income as unrestricted non-LSC funds. A written request for information regarding this (and other items reflected in the audit) was made by LSC on June 7, 2011, requiring a response by July 7, 2011. The Program failed to respond at the time of the FUR.

In response to the derivative income, DeVries CPA (DNA's auditor) responded "As for the 'derivative income' question, that was just an oversight in the financial statement preparation. It's not material, thus no restatement needs to be made, but it will get corrected in the 2011 financial statements." The completely revised Accounting Manual will address the attorney fee issue to avoid future errors in record keeping.

Finding 23: DNA documentation indicates general compliance with the requirements of 45 CFR Part 1635-Timekeeping...Though the process is not fully documented in DNA Accounting and Personnel Policies and Procedures, this data [Kemp's timekeeping] is utilized to allocate time by fund source for payroll purposes and is utilized for direct and indirect funding allocation.

DNA is revising its Accounting Manual, and we will include more specifics about using CMS time slips for payroll purposes, and the review now required by Managing Attorneys before payroll sheets are submitted. In our next update of our Personnel Manual, we will also include more specifics.

Finding 24: The DNA Accounting Procedures Manual does not adequately define administrative internal controls or significant fiscal processes. Additionally, the specific structure, functions, and report generation capabilities of the accounting software being utilized does not meet the requirements of LSC Grant Assurances, LSC Regulations, and the Accounting Guide for LSC Recipients.

DNA is revamping our Accounting system. Using consultant Judy Arrigo, we are rewriting our Accounting Procedures Manual to update our procedures, and to be in line with General Accounting Principles, LSC Grant Assurances, LSC regulations, and Accounting Guide for LSC Recipients. We are updating our accounting software, revamping our procedures to use the software more fully (including computerizing functions, a new Chart of Accounts, adding an Accounts Receivable function, adding functions to track PAI expenses, fundraising expenses, and matches for various grants), creating more useful financial reports for the DNA Executive Director and for DNA's Board, and providing intensive training to our accounting and administrative staff.

Once our new manual is complete, we will send a copy to LSC.

Finding 27: The accounting software currently in use by DNA may not be suitable for the corporate structure, geographic dispersion, and staff capabilities of the Program.

On the recommendation of the two consultants working with DNA to upgrade the accounting software, DNA has purchased the Enterprise version of MS Dynamics which is an upgrade from the Standard version. The Enterprise version incorporates all the features that we require including accounts receivable, accounts payable and payroll and allows seamless integration of all of our processes. We will have made the conversion to the new program in early 2012.

DNA PEOPLE'S LEGAL SERVICES, INC.

July 31, 2005 To June 30, 2011	Bank Fees	DNA FUNDS			Bank		LSC Paid	Non-LSC Paid	Average of LSC Fund Balance
		Payroll	Litigation	General	Earnings	Allowance			
		4001201566	4001301567	4001401568					
2005									
July 31, 2005	-						-	-	-
August 31, 2005	-						-	-	-
September 30, 2005	-								
October 31, 2005	9.93					347.57			
November 30, 2005	29.22								
December 31, 2005	-								
2006									
January 31, 2006	-						-	-	-
February 28, 2006	-						-	-	-
March 31, 2006	-						-	-	-
April 30, 2006	-						-	-	-
May 31, 2006	-						-	-	-
June 30, 2006	-						-	-	-
July 31, 2006	-						-	-	-
August 31, 2006	-						-	-	-
September 30, 2006	-						-	-	-
October 31, 2006	-						-	-	-
November 30, 2006	-						-	-	-
December 31, 2006	-						-	-	-
2007									
January 31, 2007	-						-	-	-
February 28, 2007	-						-	-	-
March 31, 2007	-						-	-	-
April 30, 2007	-						-	-	-
May 31, 2007	-						-	-	-
June 30, 2007	-						-	-	-
July 31, 2007	-						-	-	-
August 31, 2007	-						-	-	-
September 30, 2007	-						-	-	-

