



**FINAL REPORT**  
**LEGAL SERVICES CORPORATION**  
**Office of Compliance and Enforcement**

**Texas Rio Grande Legal Aid, Inc.**  
January 28 - February 1, 2008  
June 23 – 27, 2008  
Case Service Report/Case Management System Review

Recipient No. 744100

## **I. EXECUTIVE SUMMARY**

**Finding 1:** Although several inconsistencies were noted between the information yielded by TRLA's automated case management system and the information contained in the files, the automated case management system is substantially sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded.

**Finding 2:** TRLA's intake procedures substantially support LSC's compliance related requirements.

**Finding 3:** Although TRLA has adopted a financial eligibility policy that is substantially consistent with 45 CFR Part 1611 (Financial eligibility), some revision of the policy is warranted. As well, OCE noted several instances of non-compliance with LSC reporting requirements.

**Finding 4:** Five of the case files that were reviewed during the visit lacked the citizenship/alien eligibility documentation required by 45 CFR Part 1626 (Restrictions on legal assistance to aliens), CSR Handbook (2008 Ed.), § 5.5, Citizenship and Alien Eligibility Documentation Requirements, and CSR Handbook (2001 Ed.), ¶ 5.5, Citizenship and Alien Eligibility Documentation Requirements.

**Finding 5:** TRLA is in substantial compliance with LSC's retainer agreement requirement. However, in several instances the files that were reviewed during the visit either lacked a retainer, or contained a retainer that did not conform to LSC's requirements.

**Finding 6:** Two of the case files that were reviewed during the visit lacked the statement of facts required by 45 CFR Part 1636 (Client identity and statement of facts).

**Finding 7:** TRLA is in compliance with the requirements of 45 CFR Part 1620 (Priorities in use of resources). All of the files that were reviewed during the visit involved cases that were within TRLA's established priorities.

**Finding 8:** OCE reviewed a number of files that did not comply with CSR Handbook (2008 Ed.), § 5.6, Legal Assistance Documentation Requirements, or CSR Handbook (2001 Ed.), ¶ 5.1(c), General Requirements.

**Finding 9:** TRLA's application of the CSR case closing categories is substantially consistent with CSR Handbook (2008 Ed.), Chapter VIII: Case Definitions and Closure Categories and CSR Handbook (2001 Ed.), Section VIII, Case Definitions & Closure Categories.

**Finding 10:** TRLA is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3, Timely Closing of Cases. However, exceptions were noted among the closed 2007 and open files that were reviewed during the visit.

**Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 Single Recording of Cases.**

**Finding 12: TRLA is in compliance with 45 CFR Part 1608 (Prohibited political activities). OCE's review of TRLA's accounting and financial records and discussions with program management found no indicator(s) or instance(s) of non-compliance.**

**Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

**Finding 14: TRLA is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program Integrity). OCE's review of TRLA's accounting and financial records and discussions with program management revealed no indicators of non-compliance during the review period.**

**Finding 15: TRLA's PAI components comply with the requirements set forth at 45 CFR § 1614.3(d).**

**Finding 16: TRLA is in compliance with 45 CFR Part 1614 (Private attorney involvement). The review of the program's accounting financial records and discussions with program management OCE's review of TRLA's accounting and financial records and discussions with program management found that the program complies with the fiscal requirements of Part 1614.**

**Finding 17: TRLA is in compliance with 45 CFR Part 1627 (Subgrant and membership fees or dues). OCE's review of the program's accounting and financial records and discussions with program management found no exceptions, TRLA has not transferred any LSC funds and the program complies with the requirements relating to membership fees and dues**

**Finding 18: TRLA is in compliance with 45 CFR Part 1635 (Timekeeping requirement). OCE's review of TRLA's accounting and financial records, testing of timekeeping procedures and data, and discussions with program management found that the program's timekeeping policies and procedures comply with the requirements of this part.**

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

**Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 (Restrictions on legal assistance with respect to criminal proceedings) and 1615 (Restrictions on actions collaterally attacking criminal convictions).**

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

**Finding 22: TRLA is in compliance with 45 CFR Part 1632 (Redistricting).**

**Finding 23: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

**Finding 25: TRLA is in compliance with 45 CFR Part 1638 (Restriction on solicitation).**

**Finding 26: TRLA is in compliance with 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killings).**

**Finding 27: TRLA is in compliance with LSC's statutory prohibitions.**

## II. BACKGROUND OF REVIEW

On January 28 thru February 1, 2008 and June 23 thru 27, 2008, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management Systems ("CSR/CMS") on-site visit at Texas Rio Grande Legal Aid, Inc. ("TRLA"). The purpose of the visit was to assess TRLA's compliance with the LSC Act, regulations, and other applicable law. The visit was conducted by a team of nine attorneys, two fiscal analysts, and two management analysts. Four of the nine attorneys and the two fiscal analysts were OCE staff members; the remaining team members were consultants.

The on-site review was designed and executed to assess TRLA's compliance with basic client eligibility, intake, case-management, statutory and regulatory requirements, the reporting requirements set forth in the CSR Handbook (2008 Ed.) and the CSR Handbook (2001 Ed.), and to ensure that TRLA has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed TRLA's compliance with regulatory requirements 45 CFR Part 1608 (Prohibited political activities); 45 CFR 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1611 (Financial eligibility); 45 CFR § 1611.9 (Retainer agreements); 45 CFR Part 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 (Restrictions on legal assistance with respect to criminal proceedings); 45 CFR Part 1614 (Private attorney involvement) ("PAI"); 45 CFR Part 1615 (Restrictions on action collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1620 (Priorities in use of Resources); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1630 (Cost standards and procedures); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1637 (Representation of prisoners); 45 CFR Part 1638 (Restriction on solicitation); 45 CFR Part 1642 (Attorneys' fees); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing); and Section 1007(b)(8) – (10) of the LSC Act, 42 USC §§ 2996f(b)(8) – (10) (Abortion, school desegregation litigation, Military Selective Service Act or desertion).

Established in 1970, TRLA is a non-profit legal services organization that provides free legal services to low-income and disadvantaged residents in LSC service areas TX-15, MTX, and NTX-1, which consists of 68 counties in the southwestern third of Texas, including the entire Texas-Mexico border region.<sup>1</sup> TRLA is headquartered in Weslaco and maintains offices in Austin, Corpus Christi, Del Rio, Eagle Pass, Edinburg, El Paso, Harlingen, Laredo, San Antonio, Sinton, and Victoria.

In 2007, TRLA received LSC basic field funding in the amount of \$9,921,650.00. It also received an LSC migrant grant in the amount of \$1,630,945.00 and an LSC Native American grant in the amount of \$30,241. In addition, TRLA receives grant and contract support from various local, State and Federal, and private sources. According to LSC's Recipient Information

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<sup>1</sup> TRLA also provides migrant legal assistance in LSC service areas MAL, MAR, MKY, MLA, MMS, and MTN. OCE did not review– and this Report does not address - any of TRLA's operations or activities in these service areas.

Network, LSC, non-LSC grant support, derivative income and fundraising revenue totaled \$15,869,714.00 in 2007.<sup>2</sup> See [www.rin.lsc.gov](http://www.rin.lsc.gov).

TRLA is staffed by an Executive Director, two Deputy Directors, two Directors of Litigation, 25 Managing Attorneys, 28 Supervising Attorneys, 76 staff attorneys, 67 paralegals, five information technology specialists, five PAI coordinators, ten financial professionals, six management professionals, 76 law clerks, eight administrative assistants, and 69 secretarial/clerical positions. See <http://greps/Reports/tab4.asp>.

According to its *Proposal Narrative*, FY 2005 Grants Competition, TRLA's case priorities are stated as "support for family integrity, security and well-being, improving outcomes for children, preservation of the home (permanent & temporary) and the community, safety, stability and health for individuals, families and their communities, and protection and preservation of fundamental freedoms.

For 2005, TRLA reported 21,431 closed cases. Family law accounted for 52% of all closed cases; housing, 13%; miscellaneous, 11%; income maintenance, 8%; consumer/finance, 7%; employment, 4%; and individual rights, 2.5%. Education, juvenile, and health combined for less than 2.5%. Approximately 78% of all closed cases were closed after counsel and advice, or brief service; 13% were court decisions; 3% were agency decisions; and 5% were settled. Insufficient merit, change in eligibility, and "other" combined for 1%. In that same year, TRLA reported an error rate of 5.6% in its self-inspection. Exceptions were noted with respect to CSR Handbook (2001 Ed.), ¶¶ 3.2 (Single Recording of Cases), 3.3 (Timely Closing of Cases), 5.1 (General Requirement), and 5.5 (Citizenship and Alien Eligibility Documentation Requirements).

For 2006, TRLA reported 22,119 closed cases. Family law accounted for approximately 51% of all closed cases; housing, 14%; miscellaneous, 13%; income maintenance, 7%; consumer/finance, 7%; individual rights, 3%; and employment 3%. Education, health, and juvenile combined for approximately 2%. Approximately 80% of all closed cases were closed after counsel and advice, or brief service; 10% were court decisions; 5% were agency decisions; and 3% were settled. Insufficient merit and "other" combined for .5%. For 2006, TRLA reported an error rate of 4.4% in its self-inspection. Exceptions were noted with respect to CSR Handbook (2001 Ed.), ¶¶ 3.2 (Single Recording of Cases), 3.3 (Timely Closing of Cases), 5.1 (General Requirement), 5.3 (Income Documentation requirements), and 5.5 (Citizenship and Alien Eligibility Documentation Requirements).

For 2007, TRLA reported 21,634 closed cases. Family law accounted for approximately 49% of all closed cases; housing, 14%; miscellaneous, 13%; consumer/finance, 7.5%; income maintenance, 7%; employment 3%; and individual rights, 3%. Education, juvenile, and health combined for less than 2%. Approximately 64% of all closed cases were closed after counsel and advice; 16% by brief service; 10% were court decisions; 4.5% were settled; and 4% were agency decisions. Change in eligibility, insufficient merit and other combined for approximately .5%. No cases were reported as client withdrew or referred after legal assessment. For 2007, TRLA reported an error rate of 5.8%. Exceptions were noted with respect to CSR Handbook

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<sup>2</sup> In 2006, LSC provided funding totaling \$12,002,301.00 and TRLA received \$8,131,760.00 in non-LSC funds. In 2005, LSC provided funding totaling \$11,359,403.00 and TRLA received \$7,620,376.00 in non-LSC funds.

(2001 Ed.), ¶¶ 3.2 (Single Recording of Cases), 3.3 (Timely Closing of Cases), 5.1 (General Requirement), and 5.5 (Citizenship and Alien Eligibility Documentation Requirements).

In preparation for the visit, OCE requested that TRLA provide, among other things, a list of all cases reported to LSC in its 2005 CSR data submission ("closed 2005 cases"), a list of all cases reported to LSC in its 2007 CSR data submission ("closed 2006 cases"), a list of all cases closed between January 1, 2006 and November 30, 2007 ("closed 2007 cases"), and a list of all cases which remained open as of November 30, 2007 ("open cases").<sup>3</sup> OCE requested that each list 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 closure category assigned to the case, the funding code assigned to the case, and an indication of whether the case was handled by staff or by a private attorney pursuant to 45 CFR Part 1614. TRLA was advised that OCE would seek access to case information consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 9 and 10, and the LSC *Access to Records* protocol (January 4, 2005). TRLA was instructed 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.

TRLA responded that it would afford OCE access through the use of staff intermediaries. However, TRLA also requested permission to provide unique client identifiers in lieu of client names. According to TRLA, the Texas Rules of Professional Disciplinary Conduct, and several opinions from the Texas Commission on Professional Ethics, prohibits the disclosure of client - or former client - names absent the client's consent. Consequently, TRLA proposed the use of three unique client identifiers and explained the methods used to create each identifier.<sup>4</sup>

OCE granted the request and allowed TRLA to substitute unique client identifiers for client names in the requested case lists. OCE further agreed that TRLA would maintain possession of its case files and would disclose to OCE, via the intermediary, case numbers, financial eligibility information, and materials otherwise available in the public record. TRLA agreed to disclose client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements, and Part 1636 statements.<sup>5</sup> TRLA further agreed to disclose both the general nature of the client's legal problem and the general nature of the legal assistance provided.

Thereafter, TRLA provided the requested materials. All totaled, the lists contained 72,011 cases. OCE then selected a sample of cases to be reviewed during the visit. The sample included cases opened and closed during the period January 1, 2005 through November 30, 2007. An effort was made to create a representative sample of cases, distributed proportionately among open and closed cases, as well as among TRLA's various office locations. The sample consisted largely of

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<sup>3</sup> In its response to the DR, TRLA stated that it had previously explained to OCE that the list of closed 2007 cases was preliminary and that TRLA had yet to conduct its review of the cases prior to its self-inspection.

<sup>4</sup> TRLA explained that the first unique client identifier was based on the client's Social Security number and a "weighted amount", or a fixed, randomly selected number applied equally to all clients. The second was for clients without a Social Security number and consisted of the first initial of the last name, the first name, the date of birth, and the weighted amount. The third identifier was for groups and consisted of the American Standard Code for Information Exchange ("ASCII") value of each letter in the group's name, multiplied by its position in the name.

<sup>5</sup> In response to DR, TRLA stated that it did not agree to disclose client names, but did agree to disclose forms to show that they had signatures.

randomly selected cases, but also included cases selected to test for compliance with the CSR instructions relative to timely closings, group eligibility, application of the CSR case closing categories, duplicate reporting, etc.

During the visit, TRLA cooperated fully. It provided all requested materials in a timely manner. TRLA afforded access to information in the case files through the use of intermediaries. TRLA maintained possession of the files and disclosed financial eligibility information, the problem code, and the general nature of the legal assistance provided to the client. Additionally, TRLA displayed client signatures as they appeared on citizenship/alien eligibility documentation, retainer agreements and Part 1636 statements. OCE also interviewed members of TRLA's upper and middle management, fiscal personnel, staff attorneys and support staff. TRLA's case intake, case acceptance, case management, and case closure practices and policies in all substantive units were assessed.

OCE visited TRLA's offices in Austin, Corpus Christi, Del Rio, Eagle Pass, Edinburg, El Paso, Harlingen, Laredo, San Antonio, Sinton, Victoria, and Weslaco. OCE reviewed 758 files, including 237 open files, 278 closed 2007 files, and 243 closed 2006 files. Except for ten files that were selected to test for compliance with certain regulatory and reporting requirements, all of the files OCE reviewed were randomly selected.

An attempt was made to advise TRLA of any compliance issues during the course of the visit. This was accomplished by notifying intermediaries and managing attorneys of any compliance issues identified during the case reviews. At the conclusion of each week of the visit, OCE held a brief exit conference during which OCE advised TRLA of its preliminary findings. OCE advised TRLA that while no patterns of non-compliance were detected, there were instances of non-compliance with certain regulatory and reporting requirements, including duplicate reporting, timely closing of cases, files that lacked a description of the legal assistance provided to the client, citizenship/alien eligibility documentation, application of the CSR case closing categories, retainer agreements, and legal assistance provided in a criminal proceeding. TRLA was instructed that such findings were merely preliminary and that OCE might well make further and more detailed findings in the report to follow.

By letter dated September 4, 2008, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and required corrective actions. TRLA was requested to review the DR and provide written comments. By letter dated October 15, 2008, TRLA submitted its comments and corrections to the DR. OCE has carefully considered TRLA's comments and corrections and made such revisions as it deems appropriate. TRLA's comments and corrections are reflected in the Final Report and have been attached as an appendix hereto.



### III. FINDINGS

**Finding 1: Although several inconsistencies were noted between the information yielded by TRLA’s automated case management system and the information contained in the files, the automated case management system is substantially 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 systems 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 requirement. *See* CSR Handbook (2001 Ed.), ¶ 3.1.

TRLA has developed the “Client Tracking System” (“CTS”) which serves as its automated case management system. OCE reviewed the CTS and determined that there were no defaults in the system with regard to income, asset, and citizenship/alien eligibility fields. However, in some offices the CTS defaults to “telephone” in identifying the type of intake. While such a default is appropriate for TRLA’s Telephone Access to Justice (“TAJ”) centers, it is inadvisable in those offices that do not experience a high volume of telephone intake. Accordingly, it is recommended that TRLA review the defaults in its various offices to ensure that the default does not compromise the accuracy of TRLA’s case data.

Additionally, OCE noted that the CTS does not contain a field to indicate whether or not a case is LSC reportable.<sup>6</sup> TRLA stated that consistent with CSR Handbook (2008 Ed.), § 3.5, it has developed a method to identify and de-select cases that are not appropriate for inclusion in its CSR data submission.

TRLA explained that identification and de-selection is accomplished throughout the year by attorneys responsible for “disposition reviews” of cases as they come through the system. The process includes various levels of review, including the “Duty Attorneys”, who have an on-going responsibility to supervise case acceptance, including eligibility, and case closures, including timeliness and reason for closing. Ineligible applicants, applicants whose request for legal assistance is not accepted, and duplicates are de-selected by the Duty Attorneys. Additionally, team managers, group coordinators, and other casehandlers can access a report to review cases on a regular basis. Part of that review includes de-selection of cases for which services have not been provided, for which eligibility information is incomplete, or for which there is a duplicate record. The CTS identifies potential duplicate cases during the case opening and closing processes. The intake group coordinator also reviews cases that are opened through the TAJ system, and is able to make corrections throughout the year, including de-selection of cases, if necessary.

TRLA’s grants manager also reviews cases throughout the year, notifying casehandlers if there are questions regarding particular cases. The grants manager, or the casehandlers, can de-select

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<sup>6</sup> The CTS contains a field that is used to identify “LSC eligible” cases, but it was unclear whether “eligible” in this context refers to Parts 1611 and 1626 eligibility or LSC-reportability.

cases for which services have not been provided - for whatever reason -, for which eligibility information is incomplete, or for which there is a duplicate record.

In January of each year, the Human Resources Director reviews a spreadsheet of all closed cases for the year. The Human Resources Director's review includes sorting cases by closing date and by client name. The Human Resource Director reviews each case closed during the calendar year as "counsel and advice" or "limited action" and de-selects untimely closed cases. The Human Resources Director also reviews cases for possible duplication, and reviews problem codes and case description. Duplicates are also de-selected during this review.

As part of the case closing process, the CTS filters and identifies potential duplicate cases with a report called "clients with multiple cases," another tool which is utilized prior to generating the annual CSR report. Finally, TRLA has sponsored a number of eligibility and CSR trainings throughout the past two years. Each TRLA office received two such trainings during 2007 - 2008. Various memoranda and other training materials are periodically delivered to staff, and key personnel have been identified as "CSR troubleshooters" to field questions from staff throughout the year.

OCE reviewed 12 files that were identified as "rejected". *See* Alpine open File Nos. AP-10034 and 17-12431, Alpine closed 2007 File No. AP-10006, Austin open File Nos. CB-07-07125 and CB-10135, Del Rio open File No. 11-15865, Edinburg open File No. 82-26706, Harlingen open File Nos. 02-1115120, 02-1117224, 05-59247 and 82-16072, and Weslaco open File No. 08-33078. Although in most instances it did not appear that the cases were accepted for service, Del Rio closed 2007 File No. 72-460909, Edinburg open File 82-26706 and Harlingen open File No. 02-11157224 all involved eligible clients who do appear to have been accepted for service.

TRLA is reminded that "reject" may be used only for applicants who do not qualify for the recipients' services, or who are otherwise not accepted for services. Cases involving eligible clients who have been accepted for service cannot be "rejected". Recipients must have the ability to distinguish between cases that were initially rejected and those that were initially accepted, but are not appropriate for inclusion in the recipients CSR data submission. *See* CSR Handbook (2008 Ed.), § 3.5, fn. 15.

Otherwise, with several exceptions, the information produced by the case management system was consistent with the information in the files. The exceptions included several files that appeared on the list of open cases that had actually been closed in previous years. For example, Harlingen open File Nos. 05-47278 and 05-53326 appeared on the list of cases open as of November 30, 2007, but the files indicated that the cases were closed in December 2003. Austin closed 2007 File No. CB-03415 contained a 2004 closing date. Similarly, Del Rio closed 2007 File No. 72-36473 appeared on the list of cases closed by TRLA in 2007, but CTS indicated a December 2006 closing date. Harlingen open File Nos. 02-1115120 and 02-1117224 indicated that the cases were closed in February 2007, and Harlingen open File No. 05-57742 and Weslaco open File No. 08-32870 indicated that the cases were closed in August 2007.

In Austin open File No. CB-05174, the open date indicated by CTS was different from the open date stated in file. In Del Rio closed 2007 File No. 02-111644, the closing date indicated by

CTS was different from the closing date in the file. In San Antonio open File No. 19-169286, the funding code indicated by CTS was different from the funding code stated in the file. Some of the exceptions involved discrepancies between the problem code indicated in the file and the problem code indicated by the case management system. *See* San Antonio closed 2006 File No. FJ-10735, Weslaco closed 2006 File No. 01-91577, Harlingen closed 2006 File No. 05-58948, and Corpus Christi Law Center closed 2006 File Nos. 64-11238, 64-11153, and 64-11209.

Other exceptions involved discrepancies between the name of the advocate who provided the legal assistance and the name of the advocate indicated by the case management system. *See* San Antonio closed 2006 File Nos. 03 156221 and 03 156219, Sinton closed '07 File Nos. 02-111945, 02-111961, 02-111971, 82-32328, 02-111962, and 02-111998. TRLA explained that in most such instances, intake was conducted through TAJ by a paralegal. After the person is screened, the intake paralegal refers the applicant to an attorney or paralegal designated as the Duty Attorney, who assesses the applicant's issue and provides the appropriate legal assistance. Thereafter, the Duty Attorney is supposed to substitute their name for the name of the intake paralegal.

Weslaco open File Nos. 08-32606 and 08-32646 involved clients who were part of a larger Migrant and Seasonal Workers Agricultural Protection Act action against a grower. In reviewing the files, OCE noted that both files indicated an opening date in August 2005. However, the open date pre-dated the date of intake. TRLA explained that the open date corresponds to the date that the case for the original client was opened. Subsequent clients requesting assistance with the same issue against the same defendant prior to the time that the action was filed were added to the case. Since a single lawsuit was filed on behalf of all of these clients, the date that the case was open for the original client was used for all parties. TRLA indicated that it purposefully entered the same open date for all clients to assist them in tracking the single case filed for these clients.

Although this practice and TRLA's explanation appeared consistent with effective case management, CTS indicated an October 10, 2003 intake date in Weslaco open File No. 08-31551. The open date, however, was August 30, 2007 – nearly four years later. TRLA suggested that this file was also part of a single action involving multiple claimants and also suggested that the file may have been closed and re-opened. *See also*, San Antonio TAJ open File Nos. 72-45914 (intake dated July 2007; open date indicated as January 17, 2008, although file contains a Fall 2007 demand letter) and 72-45113 (intake dated April 2007; file opened February 2008, although file demonstrates legal assistance well before open date). Several other files indicated an open date well beyond the intake date, but in each such file, the open date was also the closing date. *See* San Antonio closed 2006 File No. 72-33284 (intake dated June 2004; file opened and closed as “court decision” March 20, 2006); San Antonio TAJ closed 2006 File No. 72-36198 (intake dated April 2005; file opened and closed as “court decision” March 16, 2006); *see also*, San Antonio closed 2006 File No. 72-41806. In Harlingen open File No. 05-60060, CTS indicated an interview date of August 28, 2007. The file documents the client's appearance at a September 2007 clinic and subsequent legal assistance in November 2007. The file indicates a closing date of February 25, 2008. Nonetheless, the open date reflected in the file is on February 26, 2008 – one day before it was opened.

These latter examples are the types of discrepancies that impact the accuracy of case reporting data and effective case management. Ambiguities as to open and close dates, and problem codes could well affect the recipient's ability to effectively comply with those reporting requirements that relate to timely closing and documentation of legal assistance.

In response to the DR, TRLA stated except in reference to the TAJ offices, the statement in the DR that the CTS in some office defaults to "telephone" in identifying the type of intake should be removed. TRLA further indicates that it has already removed the defaults from the offices other than TAJ.

With regard to the discussion in the DR concerning the CTS' lack of a field for reportability, and whether the "eligibility" field refers to Parts 1611 and 1626 eligibility, or LSC reportability, TRLA stated that all closed cases in the CTS that are shown as "eligible" are reportable. In TRLA's system, the "eligible" field refers to both Parts 1611 and 1626 eligibility. If an applicant is financially eligible, but is ineligible under Part 1626, the applicant will appear as ineligible and, hence, the case will not be reported.

Regarding the DR's discussion of its method of deselecting cases, TRLA responded that it has many subcategories of "reject" in order to distinguish ineligible applicants from those whose cases are deselected for other reasons. "Reject" simplifies the deselection process in the CTS. The "reject" subcategories include: financially ineligible, ineligible case type, conflict of interest, already represented by an attorney, applicant not person with case, applicant withdrew, ineligible applicant (LSC regulations), no legal problem, insufficient information, outside of service area, missing eligibility documentation, letter returned, no oral advice document, and referral only-no other service.

TRLA stated that it is, therefore, able to distinguish which applicants were rejected due to ineligibility and which were deselected for other reasons. TRLA stated that it sees no reason to change its system since it is able to generate the information required by LSC. Additionally, TRLA stated that it has found the more detailed information useful for program planning and management, and unless LSC objects, it will continue with its system.

Regarding the discrepancies between the information in the files and the information yielded by the CTS, TRLA responded that it had previously explained to LSC that the open and closed 2007 case lists had yet to be reviewed. TRLA indicated that its review in preparation for self-inspection and CSR data submission would likely reveal errors such as the files that had been closed in prior years but, nonetheless, appeared on the open case list. TRLA explained that Harlingen open File Nos. 05-47278 and 05-53326 had not been closed on the CTS at the time that the case list was generated for LSC, but all of the work had been completed in 2003. Del Rio closed 2007 File No. 72-36473 had been closed incorrectly with a 2007 date at the time the list was prepared. In preparation for the 2007 CSR data submission, the closing date was changed because the legal assistance was completed in 2006.

TRLA commented that as it reviewed its files in preparation for the 2007 CSR data submission, cases that were not timely closed were closed with an appropriate date in order to deselect them

from the 2007 CSR data submission. Accordingly, the files discussed in this part of Finding 1 were not reported to LSC.

Regarding Austin open File No. CB-05174, TRLA responded that prior to 2007, the C-BAR project had been using separate case tracking software, and most of its cases had not been reported to LSC. In 2007, the project began utilizing the CTS, but without understanding the importance of accurate open and closing dates. The file was never reported to LSC and the C-BAR staff now uses the CTS routinely and accurately.

With respect to the files cited in the DR as having inconsistencies in the funding codes, TRLA responded that the CTS reflects the most up-to-date case information. In Austin open File No. 19-169286, the funding code was changed in the CTS when the case was referred to a private attorney. Similarly, problem codes are subject to change as information about the case develops.

Regarding those files cited in the DR as advocate names inconsistent with the advocate identified by the CTS, TRLA responded that it saw no discrepancy. TRLA stated that as noted in the DR, intake is almost always conducted by a TAJ Associate or a paralegal, who then refers the file to the Duty Attorney for assessment. After the Duty Attorney's screening, the case may be transferred to another attorney or may be handled by the Duty Attorney. In any event, there is always a "Person-In-Charge", a Duty Attorney, an attorney who is in charge of the case, and an intake worker. Sometimes the same person might assume various roles, and more than one person may work on the case.

Regarding files cited in the DR with inconsistent dates, TRLA responded that the CTS displays the date of the interview, the date the case was "accepted", and the date the case was closed. The "accepted" date is auto-assigned by the CTS when a case is accepted for extended services. Since many cases (such as TAJ cases) are not "accepted" for extended service, this field can remain blank for days. Many cases go directly from "pending" or "TAJ" to "closed". As such, those cases never reflect "acceptance".

Rather than leave the "accepted" date blank, the CTS will default to the closing date since, technically, the case was never accepted for extended services. TRLA stated that it is working on a way to resolve LSC's concerns in this matter.

OCE has considered TRLA's comments and has revised or deleted reference to some of the files cited in the DR. OCE does not consider further revision warranted.

**Finding 2: TRLA's intake procedures substantially support LSC's compliance related requirements.**

**Weslaco, Edinburg, Laredo and Harlingen offices**

Intake procedures in the Weslaco, Edinburg, Laredo, and Harlingen offices were consistent. Whether by telephone or in-person, applicants are screened for financial eligibility, citizenship/alien eligibility, and conflicts. All of the information obtained by TRLA is entered

directly into the CTS. The person conducting the intake also collects a brief description of the applicant's legal issue and all of the information obtained is forwarded to the Duty Attorney.

The Duty Attorney is an attorney - or a paralegal supervised by an attorney - from each office, assigned each day on a rotating basis, to determine TRLA's response to a request for legal assistance. The Duty Attorney is the person who makes case acceptance decisions and who determines the appropriate level of legal assistance. The Duty Attorney may also decide that the request for assistance is appropriate for referral to TRLA's PAI component. The Duty Attorney's determination is entered into the CTS.

If the Duty Attorney determines that the application warrants limited service, the Duty Attorney will send a disposition letter to the applicant containing the appropriate legal advice. Alternatively, the Duty Attorney may note the appropriate counsel and advice in the CTS and send the application to an intake paralegal who will advise the applicant accordingly. In any event, the goal is to make a case acceptance determination within three days.

### **Telephone Access to Justice ("TAJ")**

TRLA also operates its previously mentioned TAJ centers in its Corpus Christi, Austin and San Antonio offices. In the Corpus Christi office, part-time paralegals field the calls and conduct intake screening Monday through Thursday from 8:00 AM – 12:00 PM. The paralegals are supervised by the TAJ Intake Supervisor, who is a staff attorney. The TAJ Intake Supervisor in the Corpus Christi office also supervises the intake in the Laredo and Sinton offices. In Austin and San Antonio, TAJ operates from 8:00 AM - 8:00 PM, Monday through Friday. The administrators in the Austin and San Antonio offices typically receive the initial calls and conduct the eligibility screening. Second and third year law students from the University of Texas at Austin and St. Mary's University in San Antonio then conduct a substantive interview with the caller to assess the nature of the legal problem.

Each TAJ unit is supervised by the TAJ administrators, as well as an experienced attorney. TRLA trains the paralegals and law students with regard to LSC regulations, as well as TRLA's intake, priorities and eligibility policies and procedures. In addition, the CTS contains case type modules which guide the TAJ intake screeners to ask the callers more specific questions related to the case type. All information obtained is recorded in the CTS. The TAJ screeners advise the callers that they are simply collecting information that will be communicated to an attorney who will be reviewing the case to determine the appropriate level of assistance. TAJ screeners have been instructed to advise callers that TRLA provides some level of assistance to all callers.

During the intake process, applicants call into the TAJ and the calls are pulled off of a queue. Callers are screened according to the queries appearing in the CTS. The queries include the caller's location, name, Social Security number, date of birth, opposing party, previous cases, citizenship/alien status, household size, income, assets, and the nature of the caller's legal issue.<sup>7</sup>

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<sup>7</sup> During the telephone intake process, applicants are queried regarding their citizenship/alien status. The CTS includes four options, including U.S. citizenship, ineligible alien, eligible alien, and unknown status. Callers who indicate that they are eligible aliens are requested to provide their alien number. In addition, the CTS provides help

After the intake is completed, the TAJ screeners identify the Duty Attorney for the day for the particular case type. The Duty Attorney is notified by e-mail that a case needs to be reviewed for case disposition.<sup>8</sup> Although the Duty Attorneys contact some of the applicants by telephone to provide counsel and advice, this is not required and does not occur in most instances. At times, the Duty Attorney or intake worker may call the applicant to provide advice, particularly if there is some urgency in the matter. In virtually all limited service cases, the Duty Attorneys send an advice letter. If the Duty Attorney determines that the case requires extended services, the case is then referred to a pro se clinic or one of the TRLA substantive units for representation.

Each legal practice team is responsible of designating a Duty Attorney whose principle duties are to make case acceptance decisions and to provide limited assistance to the callers. When the intake worker selects the case type, the CTS will display the identity of the Duty Attorney for the team handling that type of case for that day and will electronically notify him or her that a new intake needs to be reviewed for case disposition. The Duty Attorney will provide advice to the client and follow-up with a letter. The CTS has case-type modules in the software which guide the intake worker in obtaining the information necessary for the disposition of the case. Once the intake worker selects the case type, the module offers an additional set of fields, prompts and questions specific to that type of case. That information, plus all personal and eligibility information recorded in the normal course of intake is available to merge into the document assembly process.

If the Duty Attorney determines that the case merits extended services the case is reviewed further by the Duty Attorney's supervising attorney for acceptance. Cases in which the caller is ineligible for service, or it is determined that no further assistance can be provided are forwarded a rejection letter by the Corpus Christi TAJ Intake Supervisor.

### **Corpus Christi Law Center**

Intake in the Corpus Christi Law Center office is limited to emergency walk-in or telephone intake which includes any legal issue that requires a response within 72 hours. In addition, intake is performed for applicants seeking to obtain protective orders. All other applicants are given the telephone number of the TAJ for intake screening.

The Law Center maintains a relationship with the County Attorney's office to facilitate the process of obtaining protective orders. The Law Center accepts phone calls Monday through Friday from 1:15 PM - 4:15 PM from applicants seeking to obtain protective orders. The callers are initially screened for eligibility by two of the Law Center paralegals. If the caller is eligible for services, he/she is accepted as a TRLA client and is further assisted by the staff attorney whose duty is to process all protective order applications for the office. If the applicant is not eligible, he/she is referred to the County Attorney's office for assistance. Each day a paralegal from the County Attorney's office is provided a list of callers who do not qualify for TRLA services and are seeking to obtain a protective order.

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modules which assist the intake screeners in determining the status of callers who identify themselves as eligible aliens.

<sup>8</sup> The intake screeners have been advised to contact the Duty Attorney's supervisor if the Duty Attorney has not responded after three e-mail attempts.

The Law Center paralegal prepares the affidavit for the client. In addition, the paralegal meets with the client to have them sign the TRLA citizenship attestation and a TRLA protective order retainer agreement. After completing the above information for the client, the paralegal gives the file to the TRLA protective order attorney, who meets with the client and assists them in preparing for the hearing. The client also completes a protective order intake application form. The attorney completes the intake by including the information from the intake form and inserting it into the module portion of the CTS.

### **Sinton Office**

The Sinton office paralegal conducts intake eligibility screening through the TAJ on a part-time basis on Wednesday and Thursday from 8:00 AM – 12:00 PM. As in the Corpus Christi Law Center, the CTS is used to obtain the eligibility information during the screening process. After the screening process, the case is referred to the Duty Attorney for disposition. The paralegal also performs emergency intake for walk-in applicants.

The paralegal also performs outreach intake at nursing homes. The paralegal brings citizenship attestation forms, retainer agreements, and client statement of facts forms for the applicants to complete during the intake process. The paralegal also uses a manual intake form for obtaining eligibility information. All of the information so obtained is entered into the CTS upon the paralegal's return to the office, at which time a conflicts determination is made.

### **Victoria Office**

Intake is performed in the Victoria office on the first, second and third Wednesdays of each month from 8:30 AM - 12:00 PM by the three staff attorneys. Applicants either call or walk-in and are given an appointment to meet with one of the staff attorneys during one of the noted intake days. A manual intake form is provided to the applicants prior to their appointment and they are required to complete the form before their scheduled appointment. At the time of their appointment with the staff attorney, the intake information is entered into the CTS by the secretary who also performs a conflict check. The attorneys meet with the applicants at the time of the scheduled appointments to either provide limited legal assistance, inform the applicant that their case is being accepted for extended representation, or inform them that their request for legal assistance has not been accepted. All advice that is provided is followed-up with a letter. Intake is performed for social security, landlord-tenant (section 8 housing), public education and all applicants over 60. In addition, emergency intake is conducted for all emergencies in which the applicant has a pending deadline. All other applicants are advised to call the TAJ for intake screening and assistance.

Outreach intake is performed by the paralegal at homeless shelters and food banks using the manual intake form. The paralegal screens for financial and citizenship/alien eligibility. The information so obtained is entered in to the CTS when the paralegal returns to the office, at which time a conflicts check is performed.



## **San Antonio and Austin**

Although most applicants for service who walk into any of the local offices are encouraged to access the TAJ for services, some applications are accepted. Paralegals in the San Antonio and Austin offices schedule morning appointments to conduct intake screening usually three or four times per week. Emergency intake is conducted daily. Interviews in each of the two offices indicated that during in-person intakes, the applicant is given a manual intake form to complete. The information is then later entered into the CTS. Although the forms differ, each requests information relative to household size, income, assets, and citizenship/alien eligibility.

In San Antonio, the citizenship attestation form is attached to the intake form and each applicant is required to execute the form along with the intake application. In the Austin office, the intake form contains a line which asks the applicant whether they are a U.S. citizen and includes a signature line. The form also requests that legal permanent residents disclose their alien number and expiration date, and sign the form as well. Both forms comply with CSR Handbook (2008 Ed.), § 5.5.

However, staff in the Austin office advised that walk-in applicants are only asked to complete the TRLA attestation if the assistance provided goes beyond brief advice and consultation. TRLA is advised that unless the only service provided is counsel and advice or brief service by telephone, LSC regulations require a written citizenship attestation or alien eligibility verification. *See* 45 CFR §§ 1626.6 and 1626.7.

Outreach intake is conducted by Austin staff at various community centers and homeless and women's shelters. Laptop computers are used to conduct the intake eligibility screening and a conflict check. Staff indicated that some staff have applicants sign citizenship attestation forms during the intake process while other staff notate the citizenship/eligible alien status in the CTS and obtain the signed attestation or alien verification if the services extend beyond advice and counsel.

## **Del Rio and Eagle Pass**

Intake in the Del Rio and Eagle Pass offices is conducted from 9:00 AM - 12:00 PM, Monday and Wednesday. All applicants are screened for financial eligibility, citizenship/alien eligibility, and conflicts, by telephone or in person. Except for emergencies, walk-in applicants are provided a telephone and are directed to call TAJ. All of the information obtained by TRLA is entered directly into the CTS. The person conducting the intake also collects a brief description of the applicant's legal issue and all of the information obtained is forwarded to the Duty Attorney.

The Duty Attorney makes case acceptance decisions and determines the appropriate level of legal assistance. If it is determined that limited service is the appropriate level of assistance, the Duty Attorney will issue a letter to the applicant containing the appropriate legal advice. Alternatively, the Duty Attorney may note the appropriate counsel and advice in the CTS and send the application to an intake paralegal who will advise the applicant accordingly. The Duty

Attorney may also decide that the request for assistance is appropriate for referral to TRLA's PAI component. The Duty Attorney's determination is entered into the CTS.

In any event, the goal is to make a case acceptance determination within three days. Case acceptance meetings are held each week. The Branch Manager reviews the cases that have been accepted and all staff attend the meetings.

If the matter is an emergency, then intake is conducted immediately and the applicant is screened for financial eligibility, citizenship/alien eligibility, conflicts and priorities. An attorney is then assigned to the applicant that day if available.

When the case file is closed, the office prepares a closing memorandum and a compliance check list. Each attorney will assign the case closure category, which is reviewed by the Managing Attorney. Oversight of the case files are conducted on a weekly basis by the Managing Attorney.

The Eagle Pass office conducts outreach at the Housing Authority. Outreach is performed by paralegals utilizing forms for intake and, citizenship/alien eligibility status. These files are then brought back to the office and a conflicts check is performed. All information is then entered into the CTS and the matter is then discussed at the case acceptance meeting.

### **El Paso**

El Paso has three intake workers who rotate intake. The secretary takes any incoming calls and refers the call to TAJ. The secretary also retains the applicant's name, address and telephone number and places the applicant on a call back list. Walk-ins are likewise referred to TAJ unless the applicant has an emergency, in which case the applicant's information is immediately processed to determine if the applicant is eligible. If eligible, the applicant is referred to an advocate in El Paso.

El Paso intake workers telephone applicants who are on the call back list to ensure that they were able to contact TAJ. If not, El Paso will process the applicant by telephone using the CTS. TAJ also maintains call back logs for those applicants whose application could not be processed at the time of the call. El Paso's call back log contains applicant names from TAJ's call back log who reside in El Paso's program area.

TRLA's written "Delivery System" anticipates that all case review and management is conducted through the CTS. CTS gives Team Managers the ability to supervise the caseload of team members who are assigned to other offices by accessing pleadings and caseloads. The CTS is used as a tickler system to track cases and for conflict checks.

TRLA maintains a computerized closing checklist which requires the advocate to assign a closing code to the case. The computerized checklist screen is maintained in TRLA's "Revised CSR Handbook". The case closure category is assigned by the casehandler, but reviewed by the Branch Manager prior to its final submission to the casehandler's team manager. Final case closing occurs when the case is reviewed by the casehandler's team manager.

El Paso does not have any defined outreach program. However, the Team Manager for homeless cases is a recent hire by El Paso in January 2008. The Team Manager previously operated her own program which was funded by HUD. El Paso continues to maintain a separate office in the main homeless shelter in El Paso for homeless cases. Intake occurs in the same manner as it does in the El Paso office, except that all homeless intake is conducted in-house at the homeless shelters.

In response to the DR, TRLA corrected certain statements in the DR concerning the responsibilities of the Duty Attorneys relative to TAJ cases, and stated that it is the policy of TRLA to obtain a signed citizenship attestation when conducting an initial in-person intake, whether in one of TRLA's offices or during outreach. During telephone intake, callers are asked appropriate citizenship/alien eligibility questions and the response is entered into the CTS. TRLA discussed the DR with the Austin staff and all Austin staff stated that intake is conducted consistent with TRLA's policy.

**Finding 3: Although TRLA has adopted a financial eligibility policy that is substantially consistent with 45 CFR Part 1611 (Financial eligibility), some revision of the policy is warranted. As well, OCE noted several instances of non-compliance with LSC reporting requirements.**

**A. INCOME**

Recipients must establish financial eligibility policies, which, at a minimum, must: specify that only applicants for service who are determined to be financially eligible under the policy may be further considered for LSC funded legal assistance; establish annual income ceilings of not more than 125% of the applicable US Department of Health and Human Services Federal Poverty Guidelines ("FPG"); establish asset ceilings; and specify that, notwithstanding any other provisions of the regulation or the recipients financial eligibility policies, in assessing the financial eligibility of an individual known to be a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and shall not consider any assets jointly with the alleged abuser. *See* 45 CFR § 1611.3; *see also*, 70 *Fed. Reg.* 45545, at 45550 (August 8, 2005).

In determining an individual's financial eligibility, recipients are required to record the number of members in the applicant's household and the total income before taxes received by all members of such household. *See* CSR Handbook (2008 Ed.), § 5.3 and CSR Handbook (2001 Ed.), ¶ 5.3; *see also* 45 CFR § 1611.3(c)(1). For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2001 Ed.), ¶ 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but not more than 200% of the applicable FPG and the recipient provides legal assistance based on exceptions authorized under 45 CFR §§ 1611.5(a)(3) and (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, and CSR Handbook (2001 Ed.), ¶ 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as “clients” and any legal assistance rendered 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 and CSR Handbook (2001 Ed.), ¶ 4.3(a).

As required by LSC regulations, TRLA’s governing body adopted policies for determining the financial eligibility of individuals and groups on September 17, 2005. The policy specifies that only applicants for service who are determined to be financially eligible under the policy may be further considered for LSC funded legal assistance; it establishes an annual income ceiling of 125% of the FPG and an asset ceiling; and contains the language required by 45 CFR § 1611.3(e).

With four exceptions, the LSC funded files that were reviewed during the visit contained properly documented income eligibility determinations. One exception was El Paso open File No. 82-32967. The client’s income exceeded TRLA’s annual income ceiling. Aside from a notation in the CTS that the client assists his/her parents with bills, the file lacked the specific factors relied on in determining to provide legal assistance.

Three other exceptions were San Antonio closed 2007 File Nos. 03-159826 and 72-47548, and Weslaco open File No. 08-33232. In each file, the applicant’s household income exceeded TRLA’s annual income ceiling, but lacked the specific factors relied on in determining to provide legal assistance. Consistent with LSC reporting requirements, these files should be – or should have been – excluded from TRLA’s CSR data submission.

During the visit, OCE also reviewed three non-LSC funded files that appeared on the list of cases reported to LSC by TRLA in its 2006 CSR data. *See* San Antonio closed 2006 File Nos. 03-156348 and FJ-10326, and Austin closed 2006 File No. 03-156913. In each instance, the applicants’ income exceeded the annual income ceiling established by TRLA, but did not demonstrate TRLA’s consideration of any of the authorized exceptions stated in its financial eligibility policy. Although non-LSC funded, these files were reported in error.<sup>9</sup>

OCE noted that TRLA’s financial eligibility screen contains a drop down box that can be accessed for applicants whose income exceeds TRLA’s annual income ceiling. The drop down box roughly corresponds to the authorized exceptions stated at 45 CFR §§ 1611.5(a)(3) and (4), except that one line asks if the case is eligible for services under one or more of TRLA’s non-LSC grants. TRLA is reminded that while recipients are permitted to provide non-LSC funded

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<sup>9</sup> OCE reviewed other non-LSC funded files involving applicants whose income exceeded TRLA’s annual income ceiling. *See* San Antonio closed 2007 File Nos. FJ-11483 and FJ-11418 and San Antonio open File No. FJ-10948. Accordingly, each of these files should be – or should have been - excluded from TRLA’s CSR data submission.

legal assistance without regard to income and assets, consistent with LSC reporting requirements, such assistance must be excluded from the recipient's CSR data submission.

In addition, TRLA's policy contains guidelines for determining the financial eligibility of groups. The guidelines comport with the requirements of 45 CFR § 1611.6 and require that groups, corporations, associations, or other entities provide information regarding available resources, including revenues, income prospects, assets, and liabilities. Groups that lack, and have no practical means of obtaining, funds to retain private counsel are eligible if: (1) the group is primarily composed of individuals who would be financially eligible for LSC funded legal assistance, as determined by the financial or other socioeconomic characteristics of the persons comprising the group; or (2) one of the group's principal activities is the delivery of services to persons in the community who would be financially eligible for LSC funded legal assistance, as determined by the financial or other socioeconomic characteristics of those served by the group and the legal services requested by the group.

TRLA advised that it provides legal assistance on a variety of legal issues related to starting a non-profit organization, including incorporation, application for tax exempt status, contract, real estate, tax, employment, and other areas of the law. Several group files were reviewed during the visit. One, Austin closed 2007 File No. CB-03145, was a non-LSC funded file, opened in October 2003. The file contained a copy of the group's IRS 990, which is arguably sufficient to demonstrate that the group lacks, and has no practical means of obtaining, funds to retain private counsel, but the file lacked any information sufficient to warrant TRLA in the belief that the group was primarily composed of persons eligible for legal assistance under the LSC Act. Accordingly, this file should have been excluded from TRLA's CSR data submission.

## **B. ASSETS**

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. Recipients may exclude consideration of a household's principal residence, vehicles used for transportation, assets used for producing income, and other assets which are exempt from attachment under State or Federal law. *See* 45 CFR § 1611.3(d)(1). 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).

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

For CSR purposes, recipients should not report cases lacking documentation of an asset eligibility determination to LSC. However, recipients should report all cases in which there has been an asset 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 and CSR Handbook (2001 Ed.), ¶ 4.3(a).

As part of its financial eligibility policies, TRLA has established an asset ceiling for individuals and households. According to its policy, an applicant is ineligible for assistance if his/her household has available assets in excess of \$20,000.00, or \$40,000.00 if a member of the applicant's household is age 60 or over, disabled or institutionalized, and total available household assets, disregarding exclusions, exceed four times the estimated cost of obtaining private legal assistance for the matter on which the assistance is sought; or three times the estimated cost of obtaining private legal assistance for the matter on which assistance is sought, if a member of the applicant's household is age 60 or over, disabled, or institutionalized.

However, TRLA's asset ceiling not only excludes from consideration the applicant's principal residence, vehicles used by the applicant or household members for transportation, assets used in producing income, and other assets that are exempt from attachment under state and federal law, it also excludes other assets that are exempt from attachment under foreign law. This is inconsistent with LSC regulations.

As noted at the time of publication of the revised Part 1611, the list of excludable assets is set forth *in toto*. See 70 Fed. Reg. 45545, at 45551 - 45552 (August 8, 2005). Accordingly, revision of TRLA's consistent herewith is required.

Without exception, the LSC funded files that were reviewed during the visit contained properly documented asset eligibility determinations.

In response to the DR, TRLA stated that each of the five exceptions noted in the DR involved documentation of the authorized exceptions to TRLA's annual income ceiling. With respect to El Paso open File No. 82-32967 and San Antonio closed 2007 File No. 03-159826, TRLA stated that the clients met the eligibility guidelines, although more specific information should have been entered.

After consideration of TRLA's response, OCE has determined that revision is unwarranted. LSC regulations instruct that in the event that a recipient determines that an applicant for legal assistance is financially eligible on the basis of one or more of the authorized exceptions to its annual income ceiling, the recipient is obliged to document the basis for its financial eligibility determination. Further, the recipient is required to maintain such records as may be necessary to inform LSC of the specific facts and factors relied on to make such determination. See 45 CFR § 1611.5(b). Similarly, both the 2001 and 2008 editions of the CSR Handbook instruct recipients that the documentation of financial eligibility must indicate the factual basis for the recipient's eligibility determination. See CSR Handbook (2008 Ed.), § 5.5 and CSR Handbook (2001 Ed.), ¶ 5.3. The information may be recorded electronically in the recipient's case management system, or manually in the client file. With regard to these two files, TRLA's response concedes that it failed to document the basis for its financial eligibility determination. Accordingly, both files should be excluded from TRLA's CSR data submission.

With regard to San Antonio closed 2006 File No. 03 157130, TRLA agreed that the client's income exceeded its annual income ceiling, but stated that the notes in the file indicate that the client is elderly, receives SSDI, and has a disabled granddaughter. OCE has considered TRLA's response and has determined that that OCE could reasonably infer from the notes that the client

likely had dependent care expenses and/or non-medical expenses associated with age and infirmity. However, the preferred practice would be for TRLA to document the dependent care expenses and/or non-medical expenses associated with age and infirmity incurred by the client. Accordingly, OCE has revised the Final Report by deleting the reference to San Antonio closed 2006 File No. 03 157130.

With regard to San Antonio closed 2007 File No. 72-47548, TRLA stated that the client's household income was at 125% of the Federal Poverty Guideline and, as such, the client was eligible. OCE's notes indicate that a financial eligibility determination occurred on November 5, 2007. The file involved a household of three, with a total household income of \$22,000.00 per year. In 2007, for a household of three, 125% of the Federal Poverty Guideline was \$21,463.00 per year. Accordingly, revision of the DR is unwarranted.

With regard to Weslaco open File No. 08-33232, TRLA responds that the client was financially eligible and queries whether the file number is correct. OCE notes reveal that Weslaco open File No. 08-33232 involved an intake interview on November 28, 2007. The file involved a household of one, with a total household income of \$12,912 per year. In 2007, for a household of one, 125% of the Federal Poverty Guideline was \$12,763.00 per year. Accordingly, revision of the DR is unwarranted. Otherwise TRLA responded that it will continue to emphasize to staff these eligibility documentation requirements.

TRLA also commented on the non-LSC funded files cited in the DR which involved applicants whose income exceeded TRLA's annual income ceiling. TRLA agreed that some of those files were in error, and stated that any over-income cases for 2008 will be deselected. However, regarding San Antonio closed 2006 File No. FJ-10735, San Antonio closed 2007 File No. FJ-11121, and San Antonio open File Nos. FJ-11079 and FJ-10823, TRLA stated that although the applicants exceeded its annual income ceiling, the applicants were victims of domestic violence and the intake worker regarded such as a "significant factor" affecting the applicant's ability to afford legal assistance. With regard to Del Rio closed 2007 File No. 11-17716, TRLA states that the file reflects that the applicant was elderly with a disabled daughter.

LSC regulations enumerate authorized exceptions to a recipient's established annual income ceiling. The exceptions are permissive and recipients are at liberty to include some, none, or all of the authorized exceptions in its financial eligibility policies. *See* 45 CFR § 1611.5; *see also* 70 *Fed. Reg.* 45545, at 45553 (August 8, 2005). The exceptions, including "other significant factors", generally reflect financial factors that impact an applicant's ability to afford legal assistance. *See* 45 CFR § 1611.5. As indicated in the supplementary information published at the time of LSC's revision of Part 1611, LSC did not intend for "other significant factors to be used routinely. Rather, the supplementary information suggests that this section affords recipients the flexibility to consider unusual or extraordinary expenses. *See* 70 *Fed. Reg.* at 45555 (August 8, 2005).

As noted previously, OCE can reasonably infer that victims of domestic violence incur unusual or extraordinary expenses and OCE has revised the Final Report by deleting the reference to San Antonio closed 2006 File No. FJ-10735, San Antonio closed 2007 File No. FJ-11121, San Antonio open File Nos. FJ-11079 and FJ-10823, and Del Rio closed 2007 File No. 11-17716.

However, just as TRLA has acknowledged that more specific information should have been entered, LSC deems it appropriate to point out that it is not the fact that an applicant is the victim of domestic violence, is elderly, or has a disabled member of the household unit that affect an applicant's ability to afford legal assistance so much as it is the financial consequences of being a victim of domestic violence, being elderly, or caring for a disabled person. LSC requires that recipients document the specific financial facts and factors relied on by the recipient in making its eligibility determination.<sup>10</sup>

With regard to Austin closed 2007 File No. CB-03145 involving a group client, TRLA stated that the file had been closed erroneously with a 2007 closing date. The closing date was changed to 2004 prior to TRLA's 2007 CSR data submission and the file was, therefore, not reported to LSC. However, TRLA also stated that its eligibility guidelines, which conform to LSC regulations, permit eligibility consistent with 45 CFR § 1611.6(b)(ii). TRLA asserted that the principal activity of the group in Austin closed 2007 File No. CB-03145 was documented in the CTS and, therefore, the group was eligible.

According to OCE's notes, eligibility was determined October 1, 2003. Although LSC regulations currently acknowledge the eligibility of principal activity groups, at the time that TRLA determined the eligibility of this group they did not. Accordingly, revision to the DR is unwarranted.

TRLA also agreed that LSC regulations do not permit exclusion of assets exempt from attachment under foreign law. TRLA stated that it will change its policy. TRLA explained that it had adopted the exclusion because of services provided to H-2A and H-2B forestry workers, who are from foreign countries. However, no client has been qualified under this provision as these workers are particularly impoverished and any interest in property that they might have in a foreign country generally cannot be readily converted to cash.

TRLA also responded that OCE's discussion of San Antonio closed 2006 File No. FJ-10326 was incorrect. According to TRLA, the client was a married male, the opponent a woman who was not his wife and with whom he had a child. Both the client's and the wife's incomes were correctly entered. OCE has revised the Final Report, but notes that because the client's total household income exceeded TRLA annual income ceiling, San Antonio closed 2006 File No. FJ-10326 should not have appeared on the list of cases reported to LSC in TRLA's 2006 CSR data submission.

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<sup>10</sup> By focusing on the financial consequence of the given condition, a recipient may well find that the applicant's circumstance corresponds to one or more of the less ambiguous exceptions.



**Finding 4: Five of the case files that were reviewed during the visit lacked the citizenship/alien eligibility documentation required by 45 CFR Part 1626 (Restrictions on legal assistance to aliens), CSR Handbook (2008 Ed.), § 5.5, Citizenship and Alien Eligibility Documentation Requirements, and CSR Handbook (2001 Ed.), ¶ 5.5, Citizenship and Alien Eligibility Documentation Requirements.**

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. For cases involving counsel and advice and brief service provided exclusively by telephone, recipients are instructed 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. For cases in which there is in-person contact between the applicant and the recipient or continuous representation beyond advice and brief service, except as permitted by LSC Program Letter 06-2 (February 21, 2006),<sup>11</sup> the documentation of citizenship/alien eligibility must include either a written citizenship attestation or verification of alien eligibility. *See* CSR Handbook (2001 Ed.), ¶ 5.5. *See also*, 45 CFR §§ 1626.6 and 1626.7 and LSC Program Letters 99-3 (July 14, 1999) and 06-2 (February 21, 2006).

OCE was advised that the majority of applicants for service are screened for eligibility through TAJ, the centralized telephone intake line. TRLA explained that TAJ screens applicants with regard to their citizenship/alien eligibility during the telephone intake process. If the applicant is a U.S. citizen, a check mark is placed in the Citizenship Determination section in the CTS. If the applicant is identified as an eligible alien, a drop down box containing the eligible alien categories listed at 45 CFR § 1626.5 is checked. In addition, TRLA records the applicant's alien registration number. If the applicant is an ineligible alien, a determination is made whether the applicant's situation falls within the ambit of LSC Program Letter 06-2. If so, assistance is provided regardless of the applicant's immigration status. Otherwise, the applicant is referred to the Lawyer Referral Service.

As required by LSC regulations, walk-in applicants claiming U.S. citizenship are required to attest in writing to their citizenship on a form generated by the CTS.<sup>12</sup> Walk-in aliens seeking representation are required to complete an Alien Eligibility Determination Form and produce appropriate documentation verifying their eligibility. The documentation is photocopied and scanned into the CTS.

With five exceptions, the files that were reviewed during the visit contained the citizenship/alien eligibility documentation required by 45 CFR Part 1626. The exceptions included three files that

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<sup>11</sup> LSC Program Letter 06-2, "Violence Against Women Act 2006 Amendments" (February 21, 2006) permits recipients to use both LSC and non-LSC funds to provide legal assistance to an otherwise ineligible alien, provided such assistance is directly related to the prevention of, or securing relief from, battery or extreme cruelty, sexual assault or trafficking, or such offenses as are listed in 8 U.S.C. § 101(a) (15)(U) (iii). For such persons, recipients are excused from the requirements of section 1626.7, but must nonetheless maintain such records as demonstrate that the person is a victim of domestic abuse, sexual assault, trafficking or qualifies for a "U" visa. Legal assistance provided to such persons who are also financially eligible may be reported in the recipient's CSR data submission to LSC.

<sup>12</sup> During the visit to the Corpus Christi Law Center office, OCE noted that three different versions of the citizenship attestation form were being utilized by staff in that office.

should have been excluded from TRLA's 2006 CSR data submission, *i.e.*, Austin closed 2006 File No. 19-160436, Edinburg closed 2006 File No. 72-32970, and El Paso closed 2006 File No. 17-11385, one file that should be excluded from TRLA's 2007 CSR data submission, Sinton closed 2007 File No. 17-12871, and one file that should be excluded from future CSR data submissions, Austin open File No. 19-156361, unless TRLA is able to obtain a written citizenship attestation or documentation of alien eligibility prior to closing the case.

As the documentation of citizenship/alien eligibility is a substantive requirement, TRLA is advised to take all necessary corrective actions to ensure that legal assistance for or on behalf of an ineligible alien is not provided. *See* 45 CFR § 1626.3.

In response to the DR, TRLA stated that having different versions of the citizenship attestation, as noted in the Corpus Christ Law Center, is not a regulatory compliance issue. Nonetheless, TRLA agreed that the forms should be uniform and stated that it has taken steps to ensure such uniformity.

In addition, TRLA stated that it reviewed the files cited in the DR as lacking the necessary citizenship/alien eligibility documentation and found that Austin closed 2006 File No. 72-42688 involved counsel and advice by telephone only. As such, the Part 1626 documentation requirements are inapplicable. In Harlingen open File No. 05-29974, TRLA stated that there is a signed citizenship attestation in the file. TRLA explained that the staff intermediary was unable to locate the attestation when reviewing the file. In San Antonio open File No. 24-10158, TRLA stated that assistance was provided to an undocumented victim of domestic violence consistent with LSC Program Letter 06-2. El Paso open File No. 17-13104 involved a legal permanent resident whose documents were scanned into the CTS. OCE has considered TRLA's response and has revised the Final Report accordingly.

With regard to Austin closed 2006 File No. 19-160436, TRLA stated that although log entries indicate that the initial intake documents were prepared, the file had been misplaced. TRLA's comments are consistent with OCE's notes concerning this file. However, inasmuch as LSC regulations require that recipients maintain records sufficient to document compliance with Part 1626 and TRLA is unable to locate the record to demonstrate compliance in this instance, this file should have been excluded from TRLA's 2006 CSR data submission.

**Finding 5: TRLA is in substantial compliance with LSC's retainer agreement requirement. However, several files that were reviewed during the visit either lacked a retainer, or contained a retainer that did not conform to LSC's requirements.**

LSC regulations require that recipients execute a retainer agreement with each client who receives extended legal service. The retainer is to be executed when representation commences, or within a reasonable time thereafter. The retainer should conform to the applicable rules of professional responsibility and the prevailing practices in the recipient's service area and, at a minimum, should identify the nature of the client's legal issue and the nature of the legal service to be provided. *See* 45 CFR § 1611.9(a). No retainer agreement is required for counsel and

advice or brief service provided by the recipient, or for legal services provided by a private attorney pursuant to Part 1614. *See* 45 CFR § 1611.9(b). Retainer agreements are not an element of CSR reporting.<sup>13</sup>

In several instances, the files that were reviewed during the visit either lacked a retainer, or contained one that did not conform to LSC requirements. For example, the retainers in El Paso open File No. 17-9910, El Paso closed 2007 File Nos. 17-13052, 17-12038 and 82-29278, and El Paso closed 2006 File No. 01-94855 were all executed after representation commenced. The retainers in Austin closed 2007 File No. 19-152328, El Paso closed 2006 File No. 01-94855, Laredo closed 2006 File Nos. 82-21537 and 82-21076, San Antonio closed 2006 File No. 03-156640, San Antonio open File Nos. 03-154557, FJ-11323, FJ-11706, FJ-11706, FJ-11020, FJ-11765, FJ-11693, and FJ-11054, and Weslaco open File Nos. 08-32606 and 08-30965 failed to identify the nature of the services to be provided. Austin closed 2006 File No. 19-160436, Eagle Pass open File No. 09-42318, Eagle Pass closed 2006 File No. 72-33604, El Paso open File No. 17-13104, Edinburg closed 2006 File Nos. 01-92217, 72-32970, and 01-92432, and Harlingen open File No. 05-29974 lacked a retainer agreement altogether.

In response to the DR, TRLA agreed that there are occasional problems with retainer agreements. TRLA stated that its policy is to execute retainer agreements once a decision has been made to represent a client. TRLA stated that its "Intake and Eligibility FAQs" state as follows:

At the point that you realize the case is going to go beyond limited action...you also need to get a retainer agreement. You should have something in the file to explain why you didn't get these at the outset of representation, i.e., a notation that you anticipated that the case would only be limited action, where these documents would not have been required.

TRLA stated that it will continue to remind staff of the importance of the retainer agreement requirement.

TRLA also noted that at least four of the files cited in the DR report were *pro bono* cases and should not have had a retainer agreement, since that is a contractual matter between the private attorney and the client. TRLA identified the files as El Paso open File No. 82-27711, and Edinburg closed 2006 File Nos. 01-92217, 72-32970, and 01-92432.

Regarding the files identified by TRLA in its response, prior to September 7, 2005, LSC applied the retainer agreement requirement to recipient's PAI cases. *See* Office of General Counsel ("OGC") letter to Three Rivers Legal Services (August 9, 1999); *see also*, OGC External Opinion (December 5, 1995). A 1983 OGC opinion found that "the retainer agreement requirement applies to all legal services rendered by recipients, whether through staff attorneys or through various forms of private bar involvement programs." *See* OGC External Opinion (December 28, 1983). Effective September 7, 2005, no written retainer agreement is required for legal services provided pursuant to 45 CFR Part 1614.

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<sup>13</sup> 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.

Accordingly, OCE reviewed its notes and, as El Paso open File No. 82-27711 was opened after the effective date of the revised Part 1611, has revised the Final Report with respect to this file. However, the remaining files identified by TRLA in its response were opened at a time when the retainer agreement requirement was applicable to private attorney cases. Consequently, no revision to this Final Report with respect to these cases is warranted.

**Finding 6: Two of the case files that were reviewed during the visit lacked the statement of facts required by 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. 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).

With two exceptions, the files that were reviewed that required a statement contained one. The exceptions were Eagle Pass closed 2006 File No. 72-33604, El Paso closed 2007 File No. 17-9626, and Weslaco open File No. 08-32606.

In response to the DR, TRLA agreed that there was an oversight in two of the cases cited in the DR. With regard to a third case cited in the DR, TRLA stated that it reviewed the file and located the Part 1636 statement of facts. TRLA stated that the file might have been inaccessible during the visit due to construction in the office.

OCE has revised the Final Report accordingly.

**Finding 7: TRLA is in substantial compliance with the requirements of 45 CFR Part 1620 (Priorities in use of resources). All of the files that were reviewed during the visit involved cases that were within TRLA's established priorities.**

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 established priorities. *See* 45 CFR § 1620.6.

Prior to the visit, TRLA provided a statement of its 2005, 2006 and 2007 program-wide priorities. The priorities are identical for each of the years and, as noted *infra*, are stated as: support for family integrity, security and well-being; improving outcomes for children; preservation of the home (permanent & temporary) and the community; safety, stability and

health for individuals, families and their communities; protection and preservation of fundamental freedoms; maintaining and enhancing economic stability, security and justice, especially fair opportunities for employment; populations with special vulnerabilities; community and economic development; and delivery of legal services.

Without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1620.

TRLA provided no comments in response to this Finding.

**Finding 8: OCE reviewed a number of files that did not comply with CSR Handbook (2008 Ed.), § 5.6, Legal Assistance Documentation Requirements, or CSR Handbook (2001 Ed.), ¶ 5.1(c), General Requirements.**

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 automated case management system, database, or through other appropriate means.<sup>14</sup> 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 and CSR Handbook (2001 Ed.), ¶ 5.1(c).

In 18 instances, the files that were reviewed during the visit lacked a description of the legal assistance that had been provided to the client. One exception was San Antonio closed 2006 File No. FJ-10736. The only assistance indicated in the file was a referral to the state bar. In San Antonio TAJ closed 2006 File Nos. 72-37236 and 72-40226, and Austin TAJ closed 2006 File No. 82-24906, the files indicated that the clients were either unresponsive, or failed to attend a pro se program. Consistent with LSC reporting requirements, these files should have been excluded from TRLA's 2006 CSR data submission.

Two other exceptions were Laredo closed 2007 File No. 02-111888, and San Antonio closed 2007 File No. FJ-11371. These files were closed either as "counsel and advice" or "brief service", but lacked a description of the legal assistance provided to the client. Accordingly, these files should have been excluded from TRLA's 2007 CSR data submission to LSC.

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<sup>14</sup> 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). Similarly, the CSR Handbook instructs recipients that they may record and report legal assistance as a case only if, *inter alia*, they have actually accepted the client for service, the client's problem is within priorities and neither the client's legal problem, nor the legal assistance provided is prohibited by the LSC Act, regulations, or other applicable authority. *See* CSR Handbook (2008 Ed.), § 2.1 and CSR Handbook (2001 Ed.), ¶ 2.1. Consequently, whether the assistance that a recipient provides to an applicant is a "case", reportable in the recipient's CSR data, depends, to some extent on whether the recipient has accepted the client for service, 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 and CSR Handbook (2001 Ed.), ¶ 7.2.

The remaining ten files involved legal assistance provided by private attorneys pursuant to Part 1614. *See* Austin open File Nos. 19-170383, 19-169551 and 19-153912, and Austin closed 2007 File Nos. 19-149230, 82-28013, 19-168102, 19-168102, 19-159432, 19-163117 and 19-170383. None of these files contained a description of the legal assistance provided to the client. Rather, each contained a short e-mail indicating the date that the private attorney concluded the case and the case closure category. As such, these files should be – or should have been – excluded from TRLA’s CSR data submission to LSC, nor should any similar cases.

TRLA is advised that for each PAI case reported to LSC, recipients are obliged to record case and client information, including a description of the legal assistance provided to the client. *See* CSR Handbook (2008 Ed.), § 10.5. There must be sufficient information in the file or the case management system to support the case closure category selecting in closing the case. In the absence of closing information from the private attorney, information obtained from the court or other reliable source is sufficient.

In response to the DR, TRLA stated that documentation of the legal assistance provided to the client is one of the topics stressed during its trainings over the last two years. TRLA agreed that many of the files cited in the DR lacked a description of the legal assistance rendered and stated that it would deselect those files from its 2008 CSR data submission. However, TRLA disagreed with two of the files cited in the DR. OCE accepts TRLA’s explanation and has revised the Final Report accordingly.

Regarding the PAI files cited in this Finding, TRLA responded that its arrangement with Volunteer Legal Services in Austin is being reviewed.

**Finding 9: TRLA’s application of the CSR case closing categories is substantially consistent with CSR Handbook (2001 Ed.), Section VIII, Case Definitions & Closure Categories.**

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, or reason for closure, that best reflects – in the recipient’s judgment - the level of legal assistance provided. *See* CSR Handbook (2001 Ed.), ¶ 6.1.

With 12 exceptions, the files that were reviewed during the visit demonstrated that TRLA’s application of the CSR case closure categories is substantially consistent with CSR Handbook (2001 Ed.), Section VIII, Case Definitions & Closure Categories. One of the exceptions was Weslaco closed 2006 File No. 08-32705. The file was closed as “brief service”, but the level of assistance indicated in the file was more consistent with “counsel and advice”.

Austin TAJ closed 2006 File Nos. 82-24104 and 82-23849, El Paso closed 2006 File No. 72-40659, Harlingen closed 2006 File No. 05-58630, San Antonio TAJ closed 2006 File Nos. 72-36198 and 02-1111550, and El Paso closed 2007 File Nos. 72-43883 and 82-29278 were each closed as “court decision”, but the files indicated that the clients had attended pro se divorce

clinics. LSC has previously instructed recipients that if it does not enter an appearance in court on behalf of the client, the case may not be reported as a “court decision”. See *LSC Frequently Asked CSR Questions & Answers* (December 2003).

Another exception was El Paso closed 2006 File No. 17-11385. The file was closed as “counsel and advice”, but the legal assistance described in the file was more consistent with “brief service”.

Harlingen open 2007 File No. 05-57742 was closed as “counsel and advice”, but the file described a level of assistance more consistent with “other”. Finally, Edinburg open File No. 01-93463 was closed as a “court decision” in 2008. The file indicates that the court decision was a result of a settlement. CSR Handbook (2008 Ed.), Chapter VIII: Case Definitions and Closure Categories, requires that such cases be closed as “negotiated settlement with litigation”.

In response to the DR, TRLA agreed that some of the files cited in this Finding contained errors in the application of the CSR case closure categories. However, TRLA took issue with other files and commented that the case closure category in Edinburg open File No. 01-93463 has been changed consistent with the DR.

OCE reviewed the comments offered by TRLA and revised the Final Report with respect to some of the files. However, with respect to Austin TAJ closed 2006 File Nos. 82-24104 and 82-23849, El Paso closed 2006 File No. 72-40659, Harlingen closed 2006 File No. 05-58630, San Antonio TAJ closed 2006 File Nos. 72-36198 and 02-1111550, and El Paso closed 2007 File Nos. 72-43883 and 82-29278, TRLA stated that the *pro se* assistance provided by TRLA involves more than attendance at a workshop. TRLA stated that everything is reviewed by an attorney and there are extensive communications with clients on an individual basis. TRLA prepares all of the forms for the client from checklists that the client prepares. There is much more staff involvement on an individual basis than just running a workshop for a group of people, and TRLA’s timekeeping logs reflect that commitment of time and resources. TRLA stated that while the current CSR Handbook makes clear that *pro se* cases may not be closed as “court decision, TRLA asserts that, absent a clear definition from LSC, the extent of its involvement warrants a “court decision” for cases closed prior to 2008.

OCE has considered TRLA’s comments, but does not find revision to the DR to be warranted. LSC’s *Frequently Asked CSR Questions & Answers* (December 2003) (“CSR FAQ”) clearly provides that if a recipient does not appear in court on behalf of the client, the case may not be reported as a “court decision”. The CSR FAQ explains that this closing category does not appropriately represent the level of legal assistance actually provided by the recipient to the client. If the client, however, files *pro se* and the recipient later enters an appearance in court as the client’s attorney and obtains a final court decision, the case may be reported as a “court decision”. Otherwise, the possible alternative case closing categories are “counsel and advice”, “brief service”, or “other”.

**Finding 10: TRLA is in substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.3, Timely Closing of Cases. However, exceptions were noted among the closed 2007 and open files that were reviewed during the visit.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice, brief service, or a referred after legal assessment (CSR Categories, A, B, and C), should be reported as having been closed in the year in which the counsel and advice, brief service, or referral was provided.<sup>15</sup> All other cases (CSR Categories D through K) should be reported as having been closed in the year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2001 Ed.), ¶ 3.3(b). 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).

TRLA explained that data queries are run on a regular basis to check for inactive and untimely cases. Any inactive files that are discovered are administratively closed and identified as “LSC Ineligible”.

All of the closed 2006 files that were reviewed during the visit were closed timely. However, three of the closed 2007 files that were reviewed were untimely. *See* Eagle Pass closed 2007 File No. 09-45761 (opened June 9, 2006; closed June 6, 2007 as “brief service”) and San Antonio closed 2007 File No. 19-162137 (opened June 20, 2006; closed August 1, 2007 as “counsel and advice”). Since each of these files was opened prior to September 30, a written determination that it be held open into 2007 was required. The files contained no such determination. As such, these files should have been excluded from TRLA’s CSR data submission to LSC. The third file, Del Rio closed 2007 File No. 72-38552, was opened October 12, 2005 and closed September 25, 2007 as “counsel and advice. Although opened after September 30, the file lacked a written determination to hold it open - either from 2005 to 2006, or from 2006 to 2007.

Among the open files, a number of dormant/untimely cases were noted. For example, San Antonio open File No 21-10854 was opened in October 2006 and remained open at the time of the visit. However, the most recent activity noted in the file was referral to a private attorney in October 2006. The file lacked any indication of follow-up or oversight. Accordingly, this file appears to be dormant and should be administratively closed.

In Austin open File No. 19-161411, TRLA stated that it had determined that the file was untimely and had taken measures to exclude it from future CSR data submissions. Harlingen open File No. 05-58820 was opened in May 2006. Although it appeared that limited assistance was provided in May 2006, the file remained open. Similarly, Houston open File No. 72-43467 was opened in October 2006 and closed in January 2008 as “counsel and advice”. TRLA explained that the file had been left open inadvertently.

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<sup>15</sup> There are, however, exceptions for cases opened after September 30, and those cases containing a determination to hold the file open because further assistance is likely. *See* CSR Handbook (2001 Ed.), ¶ 3.3(a) and CSR Handbook (2008 Ed.), §§ 3.3(a) and (b).



In Houston open File No. 72-30679 the last activity in the file appeared to be January 2004. *See also*, Harlingen open File No. 01-90200 (opened October 2004 and closed as “brief service” in December 2007); and Harlingen open File No. 05-59356 (opened November 2006 and closed as “brief service” January 2008). Each of these files is dormant/untimely and should have been excluded from TRLA’s 2007 CSR data submission or should be excluded from future CSR data submissions.

In addition, OCE reviewed a number of open PAI files to assess case oversight and follow-up procedures. TRLA explained that it has little to no direct contact with the private attorney assigned by Volunteer Lawyer Services (“VLS”). TRLA relies upon VLS for information concerning the case. Most of the VLS files that were reviewed during the visit indicated that TRLA has contacted VLS regarding the case and that VLS had responded. However, there were several files indicating TRLA’s follow-up and oversight attempts, but no response from VLS. *See, e.g.*, Austin open File Nos. 19-16422, 19-169988, 19-166917, and 19-165573.

In response to the DR, TRLA disagreed with several of the closed 2007 files cited in the DR as untimely. TRLA explained that the nature of the legal issues confronting its clients often makes it difficult for staff to provide the immediate limited action that the client requires. Frequently, TRLA’s efforts to marshal all of the information necessary occurs over an extended period of time.

Regarding the PAI files cited in the DR, TRLA stated that it is reviewing its reporting of Volunteer Lawyer Services of Austin cases in order to prevent future problems.

OCE has considered TRLA’s comments and has revised the Final Report.

**Finding 11: Sampled cases evidenced substantial compliance with the requirements of CSR Handbook (2001 Ed.), ¶ 3.2 Single Recording of Cases.**

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

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

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

TRLA explained that data queries are run periodically to check for potential duplicates. Intake staff are required to search the CTS for pre-existing cases at the time that a conflicts check is done. If the applicant has an existing case with the same problem code in the same year, the intake screener does not open a new case. Any duplicates that are discovered are identified as “LSC Ineligible”. However, among the files that were reviewed during the visit, OCE noted one duplicate. Specifically, Corpus Christi closed 2006 File No. 1116615 was identified as a duplicate of Corpus Christi closed 2006 File No. 1116136. The files involved legal assistance provided on separate occasions within the same reporting period to the same client who returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem. As such, one of these files should have been excluded from TRLA’s 2006 CSR data submission to LSC.

In response to the DR, TRLA agreed that the file cited in the DR is a duplicate and will continue its efforts prevent duplicate reporting.

**Finding 12: TRLA is in compliance with 45 CFR Part 1608 (Prohibited political activities). OCE’s review of TRLA’s accounting and financial records and discussions with program management found no indicator(s) or instance(s) of non-compliance.**

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

OCE’s review of TRLA’s cash disbursement records, along with discussions with program management, revealed no payments, transfers of program funds and/or program action(s) inconsistent with the above. Further, the executive director stated that TRLA has made no payments or contribution of program resources, personnel or equipment in violation of Part 1608.

TRLA provided no comments in response to this Finding.

**Finding 13: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1609 (Fee-generating cases).**

Except as provided by LSC regulations, recipients may not provide legal assistance in any case which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably might be expected to result in a fee for legal services from an award to the client, from public funds or from the opposing party. 45 CFR §§ 1609.2(a) and 1609.3. LSC has also prescribed certain specific recordkeeping requirements and forms for fee-generating cases. The recordkeeping requirements are mandatory. Recipients must either use the forms developed by

LSC or other forms approved by its auditor. *See*, LSC Memorandum to All Program Directors (December 8, 1997).

As required by 45 CFR § 1609.4, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1609. OCE reviewed the policy and determined that it is consistent with Part 1609.

The files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1609.

TRLA provided no comments in response to this Finding.

**Finding 14: TRLA is in compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program Integrity). OCE's review of TRLA's accounting and financial records and discussions with program management revealed no indicators of non-compliance during the review period.**

Except as otherwise provided by LSC regulations, recipients may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by, or inconsistent with, Section 504, Pub. L. 104-134, 110 Stat. 1321 (1996). *See* 45 CFR §§ 1610.3, and 1610.4. Recipients are obliged to notify donors of these restrictions. *See* 45 CFR § 1610.5. Funds received from a source other than LSC shall be accounted for as separate and distinct receipts and disbursements in the manner directed by LSC. *See* 45 CFR § 1610.9. In the event that a recipient transfers LSC funds to another person or entity, LSC's restrictions and prohibitions, with some modifications, apply to both the LSC funds transferred and to the non-LSC funds of the transferee. *See* 45 CFR § 1610.7. Finally, recipients are required to maintain objective integrity and independence from organizations that engage in restricted activities. *See* 45 CFR § 1610.8.

Discussions with TRLA management and review of its accounting records revealed that it did not use non-LSC funds, or transfer LSC funds to others persons and entities, inconsistent with the LSC regulations. OCE's review of TRLA's chart of general ledger accounts and 2007 general ledger found that the program separately and distinctly accounts for its LSC and non-LSC grant activities as required by 45 CFR § 1610.9. As well, OCE reviewed a sample of TRLA's donor notification and acknowledgement letters and concluded that the sample letters provided adequate notification.

With regard to program integrity, OCE's review consisted of discussions with the executive director and the controller and a review of TRLA's 2007 annual certification of program integrity and 2006 cash disbursements journal. No exceptions were noted. The review found no outside relationships with organizations that may engage in restricted work.

TRLA provided no comments in response to this Finding.

**Finding 15: TRLA’s PAI components comply with the requirements set forth at 45 CFR § 1614.3(d).**

LSC regulations require that recipients devote an amount equal to not less than 12.5% of its LSC annualized basic field award to the involvement of private attorneys in the delivery of legal assistance to eligible clients. *See* 45 CFR § 1614.1(a).<sup>16</sup>

The specific methods to be undertaken by a recipient to involve private attorneys are to be determined by the recipient, except that the activities undertaken by the recipient to meet the requirements of Part 1614 must include the direct delivery of legal assistance to eligible clients. *See* 45 CFR § 1614.3(a). Additionally, the systems designed to provide direct legal assistance to eligible clients by private attorneys must, at a minimum, include: intake and case acceptance procedures consistent with the recipient’s priorities; case assignments that ensure the referral of cases according to the nature of the legal issues involved and the skills, expertise, and substantive experience of the private attorney; case oversight and follow-up procedures to ensure the timely disposition of cases to achieve the result desired by the client and the efficient and economical utilization of recipient resources; and access by private attorneys to recipient resources that provide support on substantive and procedural issues of law. *See* 45 CFR § 1614.3(d).

Recipients are required to develop a PAI plan and budget, which are to be incorporated as part of its grant application. In developing the plan, recipients are instructed to consider: the legal needs of eligible clients in the recipient’s service area and the relative importance of those needs consistent with the recipient’s priorities; the delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and the results of the recipient’s consultation with significant segments of the client community, private attorneys and bar associations in the recipient’s service area. Recipients are required to document that each year its plan has been presented to all local bar associations within the service area and summarize their response. *See* 45 CFR § 1614.4.

TRLA’s grant application includes a description of its PAI efforts. During the visit, TRLA provided a more detailed description of its PAI efforts:

**Volunteer Lawyer Project – Corpus Christi Office**

In the Corpus Christi office, two PAI Coordinators operate the Volunteer Lawyer Project (“VLP”). The VLP was established in 1982 as a joint undertaking of the former Coastal Bend Legal Services and local area bar associations. The VLP consists of three different methods of

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<sup>16</sup> LSC regulations define “private attorney” as an attorney who does not derive more than one-half of their annual professional income from a recipient of LSC funds. *See* 45 CFR §§ 1600.1 and 1614.1(d). During the visit, OCE reviewed three files that were identified in the case lists as private attorney cases. However, in each instance, legal assistance was provided by a TRLA staff attorney. *See* Austin closed 2006 File No. 19-163608, El Paso open File No. 17-13524 and El Paso closed 2007 File No. 17-12600. TRLA is advised that such cases should not be reported as PAI; nor may the costs and expenses associated with the legal assistance be allocated to TRLA’s 12.5% requirement.

service delivery which include direct referrals to pro bono attorneys, facilitation of assisted pro se divorce clinics and limited referrals to contract attorneys.

The PAI Coordinators who operate the Corpus Christi VLP are forwarded case referrals from TRLA's Duty Attorneys. The PAI Coordinators review the cases to determine whether they are appropriate for pro bono referral. If they determine that the request for assistance involves a case that they will have difficulty placing with an attorney, they advise the Duty Attorney who forwards a rejection letter to the applicant. If the PAI Coordinators determine that they will be able to locate an attorney willing to accept the case, an effort is made to refer the case out and the case is changed in the CTS from a staff case to PAI.

The Coordinators maintain a database of approximately 225 private attorneys who actively accept cases in areas of law that are consistent with TRLA's priorities.

Recruitment is done with the assistance of local judges who forward letters to all local attorneys and urge them to accept two case referrals per year. In addition, recruitment is done by the staff at local bar meetings and luncheons. Attorneys are forwarded a form which asks them to identify the types of cases they are willing to accept.

When the PAI Coordinators determine that a case is appropriate for referral, phone calls are made to attorneys in an attempt to place the case. After an attorney is located who will accept the case, a letter is forwarded to both the attorney and the client. The client is advised to contact the attorney to make an appointment. The client is also required to come into the Corpus Christi office prior to meeting with the attorney to complete the TRLA retainer agreement and the citizenship attestation form or produce the necessary alien eligibility verification documents. A status form is mailed to the pro bono attorneys every 60 - 90 days. In addition, VLP staff check the status of cases on-line through the Nueces County District Court website. At the completion of the case, the attorneys are requested to complete a final case disposition form which includes the major reason closed, client's objectives and final disposition.

## **PAI Contracts**

TRLA's PAI contracts have two components: (1) a domestic violence contract component, described below, and (2) general contracts, which involve cases other than domestic violence, which are overseen by TRLA's PAI coordinator. TRLA's Austin office facilitates the billing portion of the contract component. The Duty Attorneys determine which cases may be appropriate for referral to contract attorneys.

After exhausting other placement options for priority family law and domestic violence cases, Duty Attorneys may request that a case be considered for placement with a private attorney through a PAI contract. The domestic violence PAI coordinator (a family law team manager and attorney), reviews the case and determines if it is appropriate for placement under the program. If the case is approved for placement, the client is forwarded a letter requesting that s/he complete and return a representation agreement, a citizenship statement and a Part 1636 client statement of facts form.

Since April 2007 the bilingual assistant domestic violence PAI Coordinator in the San Antonio office has facilitated the placement and coordinates all aspects of the domestic violence contracts. Prior thereto, when a non-Spanish-speaking individual held the assistant coordinator position, all Spanish-speaking clients were referred to one of the two PAI coordinators in the Corpus Christi office. The client is forwarded a letter requesting that they complete and return a representation agreement, a citizenship statement and a Part 1636 client statement of facts form.

The procedures for referral and follow-up of the contract cases are the same as for pro bono cases, however, the contract attorney is forwarded a contract which sets forth the payment systems, hourly rates, and maximum allowable fees. Under the terms of the contract, attorneys are paid at a rate of \$50.00 an hour generally up to \$1,200.00 for the more complex cases and \$600.00 for all other cases. At the completion of the case, the attorney is required to send the assistant domestic violence PAI coordinator in the San Antonio the final orders obtained in the case and an itemized hourly billing statement. The assistant coordinator scans these documents into the CTS and forwards the originals to the domestic violence PAI coordinator in Houston, who, in turn, approves the documents and forwards them to the Weslaco office for payment. Effective September 2008, a family law attorney in the Austin office has assumed the contract responsibilities of the domestic violence PAI coordinator in Houston.

### **Nueces County Assisted Pro Se Divorce Clinic**

The Corpus Christi office also operates pro se divorce clinics that are facilitated by volunteer attorneys. The applicants are screened for eligibility through the TAJ and Duty Attorneys, who recommend placement in the clinic. If the Duty Attorney recommends placement in the clinic, the case is changed in the CTS from a staff to a PAI case. The client is advised of their placement in the clinic and is forwarded a divorce questionnaire, citizenship statement and a Pro Se Divorce Clinic Applicant Agreement. After the documents are returned by the clinic, the Corpus Christi VLP Coordinators prepare all pleadings and related documents on the client's behalf.

The clinics are attended by groups of approximately 20 - 25 clients and typically presided over by a pro bono attorney. Clients are provided written and oral instruction on the divorce process, preparing for final hearing, the Final Decree, court decorum and the consequences of failing to follow clinic procedures. Following the clinic, private attorneys meet individually with clients to review pleadings and related documents. Clients have one week to file the pleading and provide the VLP Coordinators with the Cause Number and court information. Before the 60 day statutory waiting period, the VLP Coordinators generate the final decree and related documents.

When the 60 days from the date of the filing have elapsed, the VLP Coordinators contact the court to schedule dockets for the clinic attendees. At a meeting before the call of the docket, the private attorneys review testimony with the clients and distribute an original and one copy of the final decree. The private attorney also assists the court with eliciting testimony from the clients and proffering Court documents. The VLP Coordinators advised that previously such cases were being closed in the CTS as "court decisions", but since the issuance of the 2008 CSR Handbook, all such cases are being closed as extended pro se representation.

## San Antonio PAI

In 2002, in conjunction with the San Antonio Bar Association, TRLA began the Community Justice Program (“CJP”). The purpose of the CJP is to bring the courthouse directly into the client community by creating fully-functional night courts in low income neighborhoods in San Antonio that provide complete legal services, with private attorneys, paralegals, notaries, interpreters and judges all working on a volunteer basis. The participating private attorneys are recruited by the bar association. The monthly clinics are held in three locations within the client community including the TRLA offices, St. Mary’s Center for Legal and Social Justice and Wesley Community Center.<sup>17</sup> The clinics are designed to assist clients with uncontested matters including divorce and adoption proceedings, simple landlord/tenant disputes, probate matters and wills.

Applicants are screened for eligibility by TRLA through the CTS and a conflicts check is performed for each client prior to the clinic. TRLA also schedules the appointments with the clients, and prepares any necessary documents including the pleadings prior to the clinics. The bar association’s Pro Bono Coordinator schedules the clinic appointments with the private attorneys. Citizenship attestations and a CJP pro bono retainer agreement are completed at the clinic.<sup>18</sup>

TRLA provides laptop computers at the clinic, in order for the private attorneys to make any necessary changes to prepared documents prior to filing. Clients meet with the attorneys at the clinic and have initial pleadings filed that night. In most cases, after all documents are complete, clients return to the clinic for a brief court hearing to finalize their case and leave with certified copies of the final papers.

Oversight of the CJP cases is done by both TRLA staff and the bar association’s Pro Bono Coordinator who has direct access to the CTS. The case status is checked by the TRLA PAI Coordinators on a monthly basis and the client, or the bar association coordinator, is contacted if the case appears to be inactive. The bar Coordinator forwards a monthly closed case report to TRLA staff regarding case disposition. In addition, the bar association Coordinator has access to the District Court’s automated docket system and is able to assess the disposition of the CJP cases.

The San Antonio office also holds wills clinics in conjunction with the San Antonio Women’s Bar Association every second Wednesday of each month at St. Mary’s Center for Legal and Social Justice.<sup>19</sup> Applicants are referred to TRLA by the Women’s Bar Association. TRLA conducts the eligibility screening, schedules the appointments for the clients and forwards any necessary documents in advance of the clinic. Documents prepared for the clients include wills, physicians’ directives, powers of attorney, etc. The clinic’s retainer agreement and citizenship/alien eligibility forms are signed, reviewed, and executed at the clinic. The clinic cases are closed within the week of the clinic and are coded as brief services in the CTS.

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<sup>17</sup> The Wesley clinics are held on a quarterly basis.

<sup>18</sup> The private attorney also has the option of using his or her own retainer agreement.

<sup>19</sup> The Women’s Bar Association patterned the wills clinic after the CJP clinics.

Review of the PAI oversight and follow-up procedures within the San Antonio office indicate that they are sufficient to ensure compliance with the requirements of 45 CFR § 1614.3(d).

### **Austin PAI**

The PAI component in the Austin office consists of twice weekly legal advice and intake clinics that are held in conjunction with the Volunteer Legal Services of Central Texas (“VLSCT”) at local middle schools. The intake eligibility screening is performed at the clinics by having applicants complete a manual intake form. The applicants are divided into family law and general law cases. The intake applications are reviewed at the clinic by TRLA staff. Those applicants who qualify for TRLA services are given a questionnaire to complete relevant to their case type. Qualified applicants meet with either a TRLA advocate or a private attorney, who reviews the facts of the case and provides general advice. The applicant is then advised that their case will be reviewed in order to determine whether it will be accepted by TRLA or referred to VLSCT for assistance. Applicants whose cases are referred to VLSCT for assistance are notified by letter and are further advised that VLSCT will be attempting to locate a volunteer attorney to assist them with their legal problem.

After the referral, TRLA has no subsequent contact with the client and relies on VLSCT to provide oversight of the referred cases. In addition, TRLA staff do not provide any follow-up to determine whether VLSCT was able to place the client with a volunteer attorney. VLSCT sends TRLA quarterly case disposition reports for the clinic cases that include the case number, the date the case was closed, the LSC problem code and the LSC closing code for the case. However, as noted in Finding 8, *supra*, the disposition reports do not consistently provide sufficient information concerning the specific legal assistance that was provided to the client.

TRLA must ensure that sufficient oversight and follow-up systems are instituted to ensure that TRLA receives the necessary information for all such cases.

### **TAJ PAI**

The TAJ unit maintains a system of referring clients who qualify for pro se assistance with an uncontested divorce, but reside in a rural area without access to a local office’s pro se clinic to a panel of law students who will assist the clients with filing their petitions. The law students are part-time employees and are supervised by a TRLA contract attorney who works from her home. The law students prepare the pleadings and any other relevant documents for the client and advise the client on how to file their petition. The contract attorney reviews all the pleadings and case documents from the CTS, which she can access remotely from her home. TRLA closes the above noted cases as PAI. Neither the contract attorney or the law students assigned to the cases meet with the clients in-person. All contact with the client by the assigned law student is by telephone.

### **El Paso PAI**

In addition to the pro bono component coordinated out of TRLA’s Austin office, the El Paso office maintains an independent pro bono component. This pro bono component was instituted



by a court order, still in existence, which requires every attorney who practices law or is employed in El Paso County to participate in a pro bono program. Each attorney is required to accept “no more than two domestic matters each fiscal year.” The Order defines indigence consistent with LSC financial eligibility.

El Paso’s PAI pro bono component has adequate follow up procedures which, if followed, would ensure 45 CFR § 1614.3(d)(3) oversight and follow-up compliance. Interviews with the Pro Bono Coordinator and Assistant Pro Bono Coordinator indicate that applicants are initially accepted by letter directing him/her to contact the particular pro bono attorney within thirty (30) days. The assistant pro bono coordinator conducts follow-up by personally contacting the applicant to ensure that he/she has made contact with private attorney. If contact is not possible, the pro bono attorney is contacted to verify that the applicant has made an appointment. The Pro Bono Coordinator indicated that she or the Assistant Pro Bono Coordinator follows up all cases by reviewing the pro bono open case list and contacting pro bono attorneys and applicants whose cases have been open for an extensive period of time. Both the Pro Bono Coordinator and her assistant also check case progress by reviewing the cases online at an official El Paso court website.

In 2006, El Paso’s Pro Bono Coordinator indicated that cases involving legal assistance provided by El Paso staff because the client failed to contact the pro bono attorney were, nonetheless, reported as PAI. The El Paso Pro Bono Coordinator reviewed closed PAI case lists for 2006 and 2007 and found ten such cases closed in 2006 and fifty in 2007. All such cases should have been reported as staff. *See, e.g.*, CSR Handbook (2008 Ed.), § 10.1(a).

In response to the DR, TRLA stated that it makes an effort to properly distinguish staff and private attorney cases. It agreed that the two closed files cited in footnote 13 should have been reported as staff cases and stated that it has changed the fund code on the open case that was cited. Otherwise, TRLA stated that the DR incorrectly includes "VLP Contracts" as part of the Volunteer Lawyer Project in Corpus Christi.

TRLA also stated that with respect to the Austin PAI, depending on the type of case, applicants may review preliminary information handouts and/or complete a questionnaire for the type of legal problem. Then, LSC eligible applicants consult with either TRLA staff attorneys or private volunteer counsel. All applicants receive advice, and a recommendation is made as to whether further legal assistance is warranted from TRLA or by a post-clinic referral to the VLS program to seek private volunteer counsel. All recommendations that further legal assistance is warranted are reviewed after the clinics by TRLA staff and the client is so notified.

TRLA stated that it recognizes a need for changes in the system of disposition reports and oversight and in the process of making such changes.

TRLA also agreed that there have been errors in the reporting of El Paso *pro bono* cases and has worked with staff to correct such errors.

OCE has considered TRLA’s comments and made certain revision to the Final Report.

**Finding 16: TRLA is in compliance with 45 CFR Part 1614 (Private attorney involvement). The review of the program’s accounting financial records and discussions with program management OCE’s review of TRLA’s accounting and financial records and discussions with program management found that the program complies with the fiscal requirements of Part 1614.**

LSC regulations require that recipients utilize a financial management system and procedure and maintain supporting documentation to identify and account separately for costs related to its PAI effort. *See* 45 CFR § 1614.3(e)(1).

OCE’s review of the program’s accounting policies and procedures and related PAI documentation found that TRLA utilizes a financial management system and supporting documentation that comply with the regulatory requirement.

To meet its PAI requirement, the program operates *judicare* and *pro-bono* models. Staff that devote time to PAI activity are required to document their PAI time on timesheets and within the case management system. For the review period, the program met its PAI expenditure requirements.

TRLA provided no comments in response to this Finding.

**Finding 17: TRLA is in compliance with 45 CFR Part 1627 (Subgrant and membership fees or dues). OCE’s review of the program’s accounting and financial records and discussions with program management found no exceptions, TRLA has not transferred any LSC funds and the program complies with the requirements relating to membership fees and dues**

Transfers of LSC funds by recipients to other organizations are governed by 45 CFR Part 1627. The use of LSC funds to pay membership fees or dues to any private or nonprofit organization, whether on behalf of a recipient or an individual, is prohibited, except that recipients may use LSC funds to pay membership fees or dues mandated by a governmental organization to engage in a profession. *See* 45 CFR § 1627.4. Similarly, recipients may not contribute or donate LSC funds to another organization or individual. *See* 45 CFR § 1627.5.

OCE’s review of TRLA’s accounting and financial records, along with discussions with program management, found that there has been no transfer of LSC funds that would require prior LSC approval.

With regard to membership fees or dues, the review of the program’s accounting and financial records and discussions with program management found that the program complies with LSC’s regulatory requirement. TRLA has written policies and procedures to guide its staff in complying with Part 1627. The policies state that while LSC funds can be used to pay mandatory fees or dues, non-mandatory fees or dues must be charged to TRLA’s non-LSC fund. According to TRLA’s accounting records, LSC-coded expense accounts for fees or dues were charged only with professional membership fees, payable to the Clerk of the Supreme Court.

TRLA indicated that these are mandatory fees for all TRLA attorneys to practice in the state. All other types of fees and dues for professional membership were charged to non-LSC-coded expense accounts.

TRLA provided no comments in response to this Finding.

**Finding 18: TRLA is in compliance with 45 CFR Part 1635 (Timekeeping requirement). OCE's review of TRLA's accounting and financial records, testing of timekeeping procedures and data, and discussions with program management found that the program's timekeeping policies and procedures comply with the requirements of this part.**

LSC regulations require that the time spent by attorneys and paralegals on cases, matters and supporting activity must be documented on timesheets that 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. Further, each record of time spent must contain a unique client name or case number for cases, or, for matters or supporting activities, an identification of the category of action on which the time was spent. *See* 45 CFR § 1635.3.

To track its casehandlers' time spent on cases, matters and supporting activity, TRLA uses the timekeeping component of its case management software. All staff are required to maintain their time in the case management system. TRLA uses the timekeeping data generated by the software, along with other reasonable operating data, to determine and support its cost allocations.

Based upon a review of TRLA's timekeeping policies and procedures and discussion with the controller, all program expenditures are based upon attorneys and paralegals documentation of time spent on cases, matters and supporting activities. The program uses casehandlers time data as a basis to charge its various funding sources and to derive its cost allocation percentages to charge indirect costs among its funding sources and staff PAI allocations. The review found no exceptions with the timekeeping methodology and policies and procedures.

TRLA provided no comments in response to this Finding.

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

Except as provided by LSC regulations, recipients may not claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3. The regulations define "attorney's 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 benefits. *See* 45 CFR § 1642.2(a).

Attorneys' fees received by a recipient for representation supported in whole or part by LSC must be allocated to the fund in which the recipients LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the representation. All such fees must be recorded during the accounting period in which the fees are actually received. *See* 45 CFR § 1642.5.

As required by 45 CFR § 1642.7, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1642. OCE reviewed the policy and determined that it is consistent with Part 1642. In addition, discussions with program management, along with a review of accounting records, revealed that TRLA does not and did not claim, receive or retain any attorneys' fees or court-awarded payments over the review period.

Without exception, the files that were reviewed during the visit demonstrated substantial compliance with the requirements of 45 CFR Part 1642.

TRLA provided no comments in response to this Finding.

**Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 (Restrictions on legal assistance with respect to criminal proceedings) and 1615 (Restrictions on actions collaterally attacking criminal convictions).**

Unless authorized by LSC regulations, 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.

In El Paso, TRLA advised that Class C misdemeanor cases are resolved through its homeless program. TRLA explained that such misdemeanors are not punishable by imprisonment or a jail sentence; that most of the cases involve traffic offenses and are accepted in an effort to preserve the client's driving privileges. Citing LSC Office of Legal Affairs ("OLA") External Opinion No. EX-2002-1005 (May 7, 2002), TRLA also informed OCE that the services provided have been previously approved by LSC.

Otherwise, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Parts 1613 and 1615. OCE did, however, review one file in which TRLA provided legal assistance with respect to a criminal proceeding. *See* Corpus Christi open File No. 64-11847. The client was charged with criminal assault. According to TRLA, its involvement in File No. 64-11847 was consistent with 45 CFR § 1613.4(b).

One of the authorized exceptions to LSC's prohibition against legal assistance with respect to criminal proceedings permits such legal assistance when professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being represented by the recipient. *See* 45 CFR § 1613.4(b). TRLA explained that it represented the client in a related housing case, Corpus Christi open File No. 64-11755.

Additionally, in response to the DR, TRLA demonstrated that professional responsibility required its involvement in the criminal case.

In another file, TRLA provided advice regarding the client's rights with respect to criminal issues. *See* Victoria closed 2007 File No. 65-10247. In File No. 65-10247, the client had yet to be charged, and the case was funded by a grant from the US Department of Housing and Urban Development. As such, it is not inconsistent with Part 1613. *See* 45 CFR §§ 1610.4(b) and 1613.2.

In response to the DR, TRLA explained the circumstances of Corpus Christi open File No. 64-11847, a criminal case, and its relation to Corpus Christi open File No. 64-11755, a housing case. Based on TRLA's explanation, the facts and circumstances underlying the housing case are precisely the basis for the criminal prosecution. Additionally, TRLA stated that most Texas counties, including the one where this case was pending, do not have a public defender office. These counties instead rely on a court appointment system where a private attorney can be appointed to represent an indigent defendant, but it is often late in the criminal justice process. In Texas, indigent defendants are often denied appointed counsel until they are indicted, which could come weeks or months after an arrest and initial appearance. The practice was found unconstitutional by the Supreme Court, *Rothgery v. Gillespie County, Texas*, 128 S. Ct. 2578, 171 L. Ed. 2d 366 (June 23, 2008). TRLA also stated that there are no other organizations that could have provided the necessary legal representation. Organizations that provide free legal assistance, particularly in criminal matters, are rather scarce in Texas.

LSC's OLA, in at least two external opinions, has suggested that recipients may represent a client in a related criminal matter if the recipient is satisfied that there is no viable alternative to its involvement. OLA External Opinion EX-2002-1005, on the first page, second paragraph, clearly demonstrates that there was no viable alternative to the recipient's involvement. The OLA opinion counsels the recipient to consider the availability of public defender or bar referral services. *See also*, OLA opinion to Legal Services Corporation of Alabama (February 11, 1981).

As noted, TRLA has sufficiently demonstrated that the criminal proceeding arose from the same set of facts and circumstances as the housing case. Additionally, TRLA has stated that the attorney assigned to the housing case consulted with his supervising/team manager and TRLA's litigation director, and that TRLA determined that there was neither a public defender program or bar referral service that could provide the necessary assistance. Accordingly, TRLA's involvement in the criminal case is consistent with 45 CFR § 1613.4(b).

TRLA also states that it believes that the case should be included in its 2008 CSR data submission. OCE agrees and has revised this Final Report consistent with the discussion contained herein.

The DR also cited two other files in this Finding. In its response, TRLA clarified that the legal issue in one of the files was not criminal, and OCE has revised the Final Report accordingly. Regarding the second file, Victoria closed 2007 File No. 65-10247, TRLA stated that the client requested advice relative to her theft and use of a credit card. As noted in the DR, TRLA states that no criminal charges were pending and, as such, legal assistance in such instance was not inconsistent with 45 CFR § 1613.3.

**Finding 21: 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. 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).

As required by 45 CFR § 1617.4, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1617. OCE reviewed the policy and determined that it is consistent with Part 1617.

Discussions with staff indicated that TRLA is not involved in any class actions, and, without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1617.

TRLA provided no comments in response to this Finding.

**Finding 22: TRLA is in compliance with 45 CFR Part 1632 (Redistricting).**

No funds, or personnel, or equipment may be made available 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.

There was no indication that TRLA has made available any funds, personnel or equipment such use. Discussions with staff indicated that TRLA is not involved in such activities, and, without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1632.

TRLA provided no comments in response to this Finding.

**Finding 23: 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.

As required by 45 CFR § 1633.4, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1633. OCE reviewed the policy and determined that it is consistent with Part 1633.

Discussions with staff indicated that TRLA does not provide representation in such instances, and, without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1633.

TRLA provided no comments in response to this Finding.

**Finding 24: 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.

As required by 45 CFR § 1637.5, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1637. OCE reviewed the policy and determined that it is consistent with Part 1637.

Discussions with staff indicated that TRLA does not provide representation to prisoners, and, without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1637.

TRLA provided no comments in response to this Finding.

**Finding 25: TRLA is in compliance with 45 CFR Part 1638 (Restriction on solicitation).**

Recipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice. Nor may recipients or their employees refer persons to whom they have given in-person unsolicited advice to other recipients. *See* 45 CFR § 1638.3. “In-person unsolicited advice” refers to a face-to-face, or personal encounter via other means of communication such as a personal letter or telephone call in which advice to obtain counsel or take legal action is given by a recipient or its employee to a person who did not seek such advice and with whom the recipient has no attorney-client relationship. *See* 45 CFR § 1638.2.

As required by 45 CFR § 1638.5, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1638. OCE reviewed the policy and determined that it is consistent with Part 1638.

Discussions with staff indicated that TRLA is not involved in such activities. Nor did OCE's review of community education materials and program literature evidence involvement in such activity. Without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1643.

In its response to the DR, TRLA offered certain corrections to the Finding. OCE has revised the Final Report.

**Finding 26: TRLA is in compliance with 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killings).**

LSC funds may not 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 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.

As required by 45 CFR § 1643.5, TRLA has developed a written policy to guide its staff in complying with the requirements of Part 1643. OCE reviewed the policy and determined that it is consistent with Part 1643.

Discussions with staff indicated that TRLA is not involved in such activities, and without exception, the files that were reviewed during the visit demonstrated compliance with the requirements of 45 CFR Part 1643. Nor did OCE's review of TRLA's priorities, community education materials or other program literature evidence involvement in such activity.

TRLA provided no comments in response to this Finding.

**Finding 27: TRLA is in compliance with LSC's statutory prohibitions.**

The LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any abortion related proceeding or litigation, any proceeding or litigation relating to school desegregation, 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. Sections 1007(b)(8), (9), and (10) of the LSC Act.

Interviews with TRLA staff indicated that it was not engaged in any litigation which would be in violation of LSC's statutory prohibitions. Without exception, the files that were reviewed during the visit demonstrated compliance with LSC's statutory prohibitions.

TRLA provided no comments in response to this Finding.



#### IV. RECOMMENDATIONS<sup>20</sup>

Based on the foregoing, OCE makes the following recommendations:

1. Review the defaults in its various offices to ensure that the default does not compromise the accuracy of TRLA's case data.
2. Review its de-selection method in view of LSC's reporting requirements and consider addition of an "LSC Reportable Y/N" field to the CTS to identify cases involving eligible clients, who have been accepted for service, but for whatever reason are not reportable.
3. Undertake periodic reviews of the information in the CTS to ensure accuracy.
4. Review the Part 1626 and Part 1636 forms used in the various offices to ensure uniformity.
5. Implement measures to ensure that retainer agreements are complete and present when required.
6. Ensure that staff is trained on the case closure categories in accordance with CSR Handbook (2008 Ed.), § 6.1,

In response to the DR, TRLA stated that except for #2, it agrees with all of the Recommendations. TRLA stated that, as noted previously, all eligible cases are reportable to LSC. TRLA stated that to require additional data entry or additional fields of data is simply unnecessary and could lead to additional confusion and reporting problems.

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<sup>20</sup> 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 recipient with item addressed in the report. Often recommendations address potential issues and may assist a recipient in avoiding future compliance errors. By contrast, the items listed in the "Required Corrective Actions" section must be addressed by the recipient, and will be enforced by LSC.

## V. REQUIRED CORRECTIVE ACTIONS

Based on the forgoing, the following corrective action is warranted:

1. The default to telephone intake within the CTS, in all offices other than the TAJ, should be removed.

In response to the DR, TRLA stated that it has removed the default to telephone intake within the CTS in all offices other than TAJ.

2. Revise its financial eligibility policy to conform to 45 CFR § 1611.3(d)(1).

In response to the DR, TRLA stated that revision of its financial eligibility policy will be addressed at the next meeting of its governing body.

3. Ensure compliance with the requirements of 45 CFR § 1611.9(a).

TRLA provided no comments in response to this Required Corrective Action.

4. Ensure compliance with the documentation requirements set forth in 45 CFR §§ 1626.6 and 1626.7.

TRLA provided no comments in response to this Required Corrective Action.

5. Ensure compliance with CSR Handbook (2008 Ed.), §§ 2.3 and 2.3.

TRLA provided no comments in response to this Required Corrective Action.

6. Ensure compliance with CSR Handbook (2008 Ed.), §§ 3.2, 3.3 and 3.6.

TRLA provided no comments in response to this Required Corrective Action.

7. Ensure compliance with CSR Handbook (2008 Ed.), §§ 5.2, 5.3, 5.5 and 5.6.

TRLA provided no comments in response to this Required Corrective Action.

8. Ensure compliance with CSR Handbook (2008 Ed.), § 10.5.

TRLA provided no comments in response to this Required Corrective Action.

TEXAS RIOGRANDE LEGAL AID, INC.

300 South Texas Blvd.  
Weslaco, Texas 78596



Office: 956-447-4800  
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October 15, 2008

Danilo Cardona, Director  
Office of Compliance and Enforcement  
Legal Services Corporation  
3333 K Street, NW 3<sup>rd</sup> Floor  
Washington, D.C. 20007-3522

Via email and letter

Dear Danilo:

Attached is TRLA's response to LSC's Office of Compliance and Enforcement Draft Report of its compliance review of TRLA during its two visits in 2008.

Feel free to let me know if you need further information.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

A handwritten signature in black ink, appearing to read "David G. Hall".

David G. Hall  
Executive Director

enclosure

**RESPONSE OF TEXAS RIOGRANDE LEGAL AID, INC. to  
LSC Office of Compliance and Enforcement  
Draft Report**

**January 28 – February 1, 2008  
June 23 – 27, 2008**

**Case Service Report/Case Management System Review**

**Recipient No. 744100**

Texas RioGrande Legal Aid (TRLA) submits the following comments and corrections to the draft report received from the Legal Services Corporation regarding its Case Service Report/Case Management System review of TRLA.

In LSC's section of "Background of Review," there are two errors:

p. 6:

1<sup>st</sup> paragraph, 4<sup>th</sup> line: The list of closed cases was for the period January 1, 2007 (not 2006) through November 30, 2007; TRLA had explained that this list was very preliminary since it had not yet completed a final review prior to preparing for its self-inspection.

3<sup>rd</sup> paragraph: TRLA did not agree to "disclose" client names, but did agree to disclose the forms to show that they had signatures.

### **SPECIFIC FINDINGS:**

**Finding 1: Information necessary for effective management of cases is accurately and timely recorded.**

*Page 8 of report*

LSC states that in some offices TRLA's Client Tracking System (CTS) defaults to "telephone" in identifying type of intake. Except for TAJ, this should be removed. **TRLA has already done so.**

LSC further states that the CTS does not contain a field to indicate whether a case is "reportable;" and that the CTS contains a field that is used to identify "LSC eligible" cases, but it was unclear whether "eligible" in this context refers to Part 1611 and 1626 eligibility or LSC-reportability.

All closed cases in the CTS which are shown as "eligible" are reportable. In our system, the "eligible" field refers to both 1611 and 1626 eligibility. If an applicant is financially eligible but ineligible under 1626, s/he will be shown as ineligible and the case will not be reported.

*Page 9 of report:*

LSC states that "Reject" may be used only for applicants who do not qualify or otherwise are ineligible, and shouldn't be used for deselection otherwise. Recipients must be able to distinguish between cases initially rejected and those that were initially accepted but are not appropriate for inclusion in CSRs.

TRLA has many subcategories of "Reject" in order to distinguish ineligible applicants from those whose cases are deselected for other reasons. "Reject" simplifies the deselection process in our system. "Reject" subcategories include the following:

Financially Ineligible
Ineligible Case Type
Conflict of Interest

Already represented by Attorney
Applicant not person with case
Applicant withdrew
Ineligible Applicant (LSC regs)
No legal problem
Insufficient information
Outside of Service Area
Missing Eligibility Documentation
Letter returned, no oral advice document
Referral Only-No Other Services

We are therefore able to distinguish which applicants were rejected due to ineligibility and which were deselected for other reasons. We do not see a reason to change this system since we are able to generate the information required by LSC. Furthermore, TRLA has found the more detailed information useful for program planning and management. Accordingly, and unless LSC objects, TRLA will continue with this system.

LSC lists 12 files that were identified as “rejected.” Of those files, AP-10034 and CB-07125 are actually open cases. In addition, two of the file numbers listed were incorrect: 72-460909 is actually 72-46909, and 02-11157224 is actually 02-1117224.

LSC notes that some of the files which appeared on the list of open cases submitted to LSC prior to the visit had actually been closed in prior years. As had been explained to LSC when the lists of open and 2007 closed cases were submitted, many changes were to be expected prior to the LSC visit because of preparing for self-inspection and the 2007 CSRs. Some of those changes are as follows:

Harlingen files 05-47278 (which was listed twice in LSC’s paragraph for the same reason) and 05-53326 had not been closed on the CTS at the time the caselist was generated for LSC, but all the work had been completed in 2003. File CB-03415, which according to the LSC report was a San Antonio case, is actually Texas C-BAR (Austin) File CB-03145; it had also been left open on the CTS, but was correctly closed with a 2004 date. As advocates were reviewing their files for the 2007 CSR report, when they found cases that had not been closed on a timely basis, the cases were closed with the appropriate dates in order to deselect them from 2007 CSR reports. Therefore, neither of these cases has been reported to LSC as part of TRLA’s CSRs.

Del Rio file 72-36473 had been closed incorrectly with a 2007 date at the time of the list preparation, but upon review for the 2007 CSR report the closing date was changed because work had been completed in 2006. All of the other cases listed (from Harlingen and Weslaco) were closed after preparation of the list, but closed with appropriate dates indicating when services terminated.

*Page 10 of report:*

LSC states that the open date in one file and the closed date in another file were different from those on the CTS. The first file mentioned, CB-05174, is actually an Austin, not a San Antonio, case. The second file number listed by LSC, Del Rio file 02-111644, is actually 02-1116443. It is our assumption that LSC is referring to the dates in the hard file as compared with those in the CTS; if so, our explanation is that the hard file will not always contain dates since the CTS is the primary record.

Regarding the two files reported by LSC: The Del Rio office has examined the hard file 02-1116443 and states that a notation in the file regarding the closing date has the same date as is on the CTS, contrary to what we understand LSC to be saying. Regarding the Austin C-BAR case (CB-05174): The C-BAR project of TRLA, prior to 2007, had been using separate case tracking software, and most of its cases had not been reported to LSC as part of TRLA's CSRs. In 2007 the project began utilizing the CTS, but without the understanding of the importance of accurate open and closing dates. The case in question was never reported in TRLA's CSRs, and the C-BAR staff now uses the CTS routinely and accurately.

LSC notes that the fund code in the CTS for San Antonio (which was actually Austin) open case 19-169286 was different from that in the file. The CTS reflects the most up-to-date case information. The fund code in this case was changed on the CTS when private attorney involvement came into play. The same can be expected of corrections in problem codes, as listed in the LSC report. As more information is obtained, the problem codes may change.

Regarding discrepancies between the name of the advocate who provided the legal assistance and the name of the advocate indicated by the case management system: We do not see any discrepancies. As noted in the LSC report, intake is almost always conducted by a TAJ Associate or a paralegal, who then refers the case to the Duty Attorney for assessment. After this screening, the case may be transferred to another attorney or may be handled by the Duty Attorney. In any case, there is always a Person-in-Charge (PIC), a Duty Attorney, an Attorney who is in charge of the case, and an Intake Worker. Sometimes the same person might have various roles (PIC and Attorney, for example), and more than one person may work on the case.

Open date discrepancies: The CTS shows the date of the interview, the date the case was "accepted," and the date the case was closed. The "date accepted" gets auto-assigned by the CTS when a case is accepted for extended services. Because many cases (such as TAJ cases) never get to the accepted category, the field can remain blank for days. Many cases will go straight from "Pending" or "TAJ" status to "Closed." Those cases, in other words, never reflect "acceptance."

Instead of leaving the "date accepted" blank, the CTS will default to the closing date since, technically, the case was never "accepted" for extended services. We are working on a way to resolve LSC's concerns in this matter. We do think, however, that some of the cases noted in LSC's report reflect proper dates. For example:

82-27038: interview date 7/24/06, opened & closed as "counsel and advice" on 8/29/06

82-30548: interview date 4/20/07, opened and closed as "counsel and advice" on 5/18/07

72-40226: interview date 3/1/06; after a few months of communications with client, the decision was made to open & close the case as "counsel and advice" on 8/25/06.

*p. 12 of report:*

In the description of the Telephone Access to Justice, paragraph 3, line 3, the report states "The Duty Attorney is then responsible for contacting the caller and providing advice and counsel. The telephone advice is typically followed up by a letter." While Duty Attorneys do contact some of the applicants by phone to provide legal advice, this is not required and does not happen in most cases. At times, a Duty Attorney or intake worker may call the client to provide legal advice, particularly if there is some urgency in the matter. In virtually all limited service cases, Duty Attorneys send a legal advice letter to the client.

### **Finding 2: Intake procedures**

*p. 14 of report:*

LSC reports that "someone in the Austin office" advised LSC that walk-in applicants are asked to sign a citizenship attestation only if the assistance provided goes beyond brief advice and consultation, and that some staff do not get the attestation signed during intake conducted when part of outreach. It is our policy, and staff is trained, to obtain a signed citizenship statement when conducting an initial intake with an applicant in person, whether in the office or during outreach. In discussions with Austin staff after receiving the draft report, all stated that this is the way intake is conducted, and our experience is that this is the procedure staff follows in the Austin office. When intakes are done over the phone, the client is simply asked if s/he is a citizen (or eligible alien), and such information is entered in the CTS. If the case receives extended services, we have the client sign the citizenship attestation (if a U.S. citizen). We will continue to reiterate these requirements to all staff.

### **Finding 3: Financial eligibility**

#### **A. Income**

*p. 17 of report:*

LSC reports five LSC-funded cases in which eligibility was not properly documented. For these cases, LSC states that the files lacked specific factors relied on to determine eligibility. All of these cases involve documenting eligibility factors for those whose incomes exceed 125% of poverty but are below 200%. The cases noted by LSC and TRLA's responses follow:

<b>TRLA File #</b>	<b>TRLA response</b>
82-32967	TRLA's position is that the client met eligibility guidelines, but we agree that more specific information should have been entered. If we are unable to obtain sufficient information, the case will be deselected from 2008 CSRs.



TRLA File #	TRLA response
03-159826	TRLA's position is that the client met eligibility guidelines, but we agree that more specific information should have been entered.
72-47548	The client's income was \$22,000, which is exactly the same as the income guideline at 125%. Under our system, a client at the income guideline is eligible.
08-33232	This client was under the 125% guideline; could this be the wrong file number?
03-157130	The household income for 2 was \$17,856, \$356 over the guidelines. The intake worker noted "Client is elderly on SSDI and has a granddaughter who is disabled." While TRLA agrees that more specific information should have been entered, we also feel strongly that this person was eligible.

TRLA will continue to emphasize to staff these eligibility documentation requirements.

*pp. 17-18 of report:*

LSC reviewed ten non-LSC funded files in which it states the applicants' income "exceeded the annual income ceiling." We agree that some of those cases were in error, and any over-income cases for 2008 will be deselected, but would like to point out the following:

TRLA File #	TRLA response
FJ-10735	The client was \$364 over the \$13,000 income guideline. The intake worker found as a "significant factor" affecting the client's ability to afford legal aid that she was a victim of domestic violence. We agree that there should have been more specificity, but we are also sure that the client was eligible.
11-17716	The client was elderly with a disabled daughter and was \$1,000 over the 125% guideline. While TRLA agrees that more specific information should have been entered, we are also confident that this person was eligible.
FJ-11121	The client was somewhat over the 125% income guideline. The intake worker found as a "significant factor" affecting the client's ability to afford legal aid that she was a victim of domestic violence. We agree that there should have been more specificity, but we are also confident that the client was eligible.
FJ-11079	The client was somewhat over the 125% income guideline. The intake worker found as a "significant factor" affecting the client's ability to afford legal aid

TRLA File #	TRLA response
	that she was a victim of domestic violence. We agree that there should have been more specificity, but we are also sure that the client was eligible. Eligibility will be reviewed before submission of 2008 CSRs and the case will be excluded if ineligible.
FJ-10823	The client was somewhat over the 125% income guideline. The intake worker found as a "significant factor" affecting the client's ability to afford legal aid that she was a victim of domestic violence. We agree that there should have been more specificity, but we are also sure that the client was eligible. Eligibility will be reviewed before submission of CSRs and the case will be excluded if ineligible.

LSC reports that one file (CB-03145) on behalf of a group "lacked any information sufficient to warrant TRLA in the belief that the group was primarily composed of persons eligible for legal assistance under the LSC Act. Accordingly, this file should have been excluded from TRLA's CSR data submission."

First of all, the file had been closed erroneously with a 2007 date (which was changed to 2004 prior to submission of 2007 CSRs since that is when services were provided). It was therefore never reported to LSC. Second, TRLA's group eligibility guidelines, which conform to LSC regulation, state that a group can be eligible if "one of the group's principal activities is the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, as determined by the financial or socioeconomic characteristics of the persons served by the group, and the legal assistance sought by the group is related to such activity." This was documented in the CTS for this file, and the group was eligible.

## **B. Assets**

*p. 19 of report*

LSC states that TRLA's exclusion of "other assets that are exempt from attachment under foreign law" is inconsistent with LSC regulations. Upon review, TRLA agrees that 45 CFR 1611.3 does not permit an asset ceiling to exclude from consideration other assets that are exempt from attachment under foreign law. TRLA will change its policy on excludable assets accordingly. TRLA had included the exclusion of assets exempt from attachment under foreign law because we provide legal services to many H-2A and H-2B forestry workers who by definition are from foreign countries. However, no client has been qualified under this provision as these workers are generally quite poor and any interest in property they might have in a foreign country generally cannot be readily convertible to cash.

LSC states that in file FJ-10326, TRLA had "considered the income of the alleged perpetrator" in determining the income eligibility of the client. This is incorrect. The client was a married male,

the opponent a woman who was not his wife and with whom he had a child. Both the client's and his wife's incomes were correctly entered. TRLA's policy states as follows:

If an applicant has identified herself/himself as a victim of domestic violence, in determining financial eligibility for LSC-funded services, TRLA shall consider only the assets and income of the applicant and those members of the applicant's household other than the alleged perpetrator of domestic violence, and shall not include any assets held by the alleged perpetrator of domestic violence, jointly held by the applicant with the alleged perpetrator, or jointly held by any member of the applicant's household with the alleged perpetrator.

**Finding 4: Citizenship and Alien documentation requirements**

*p. 20 of report:*

LSC notes that the Corpus Christi Law Center utilizes three different version of the citizenship attestation form, and recommends that TRLA ensure uniformity. Although it is TRLA's position that having different forms is not a compliance problem, we agree that such forms should be uniform, and have taken the steps to ensure this.

*p. 21 of report:*

LSC notes that nine files that did not contain required citizenship/alien eligibility documentation. TRLA has reviewed the cases listed by LSC and is in agreement that some files did not contain the documentation; however, please note the following:

<b>TRLA File #</b>	<b>TRLA response</b>
19-160436	According to an entry in the CTS, the citizenship form was signed. In addition, there is a log entry indicating that the initial intake documents were prepared. However, the file has been misplaced and we have still been unable to locate it.
72-42688	Telephone case closed as "counsel and advice," citizenship noted in CTS, no requirement for signed citizenship form
05-29974	There is a signed citizenship form in the file. The TRLA attorney reviewing the file with LSC had apparently overlooked it.
17-13104	El Paso case; client was a Legal Permanent Resident and copies of his documents are scanned into the CTS
24-10158	Case was on behalf of an undocumented victim of domestic violence. The eligibility information had originally been filled out incorrectly, but no additional documentation was required.

As mentioned previously, TRLA's policy is in compliance with LSC requirements, although occasionally human error occurs.

**Finding 5: Retainer agreements.**

TRLA agrees that there are occasional problems with retainer agreements. It is TRLA's policy that retainer agreements be executed once a decision has been made to represent a client. TRLA's "intake and eligibility FAQs" state as follows: "At the point that you realize the case is going to go beyond limited action...you also need to get a retainer agreement. You should have something in the file to explain why you didn't get these at the outset of representation, i.e., a notation that you anticipated that the case would only be limited action, where these documents would not have been required." We will continue to remind staff of the importance of this requirement.

It should be noted that at least four of the file numbers noted in the LSC report were *pro bono* cases and should not have had a retainer agreement, since that is a contractual matter between the private attorney and the client. Those files are 82-27711, 01-92217, 72-32970, and 01-92432.

*p. 22 of report:*

**Finding 6: Statement of Facts.**

LSC reports that three of the files reviewed that required a statement of facts did not contain one. We agree that there was an oversight in two of the cases in which there should have been a statement of facts. Eagle Pass file 72-33604 does contain a signed statement of facts dated 7/26/04, and such activity was logged in the CTS at the time. (This file may have been inaccessible during the LSC visit due to construction in the office.) As with other requirements, TRLA has clear instructions for its staff regarding the requirement to get a signed fact statement for those cases in which they are necessary. We will continue to remind staff of this.

*p. 23 of report*

**Finding 8: Legal Assistance Documentation Requirements.**

LSC reports a problem with lack of description of legal assistance provided to clients in 18 instances. This is one of the topics stressed in trainings held over the last two years. We agree that many of the cases were lacking proper documentation, and will deselect those 2008 cases to which this applies. However, we disagree with the following:

Del Rio file 11-17659 (incorrectly listed by LSC as 1-17659): closed as "Brief Service" (now "Limited Action"): file shows that an affidavit was prepared on client's behalf, therefore "Brief Service" would be correct.

El Paso file 17-13524: This was a *pro se* divorce client. As with other assisted *pro se* divorce cases, TRLA prepared the legal documents and held a class attended by the client at which the entire process was explained. All documents were reviewed by an attorney, and there were

extensive phone calls and communications with the client on an individual basis. (There are 62 log entries on this case, for example.) Once the petition was filed by the client, he brought a copy to the office so that a decree could be generated. TRLA goes much further than simply providing a pamphlet or brochure, and believe that this case should be included in 2008 CSRs.

Regarding the ten cases noted by LSC in which legal assistance was provided by private attorneys through TRLA's arrangement with Volunteer Legal Services in Austin, this arrangement is in the process of being reviewed and revised.

*p. 24-25 of report*

### **Finding 9: Case Definitions and Closure Categories**

LSC reports finding sixteen cases in which incorrect case closing categories were used. TRLA agrees that mistakes were made in some; however, we disagree with the following:

09-45944: LSC states that the assistance was more consistent with "advice" than "brief service." However, TRLA prepared a *pro se* answer on behalf of this client, meaning that brief service would be the correct category.

Eight files which were *pro se* divorce cases were listed by LSC as having been closed incorrectly as "court decisions:" 82-24104, 82-23849, 72-40659, 05-58630 (listed incorrectly as 05-5863 in LSC report), 72-36198, 02-1111550, 72-43883, 82-29278.

As explained previously, assisted *pro se* at TRLA is more than just a workshop, as was the example in the 2003 CSR FAQs cited by LSC. Everything is reviewed by an attorney, and there are extensive communications with clients on an individual basis. TRLA prepares all the forms for the client from checklists they prepare and we scrutinize closely. There is much more staff involvement on an individual basis than just running a workshop for a group of people, and our timekeeping logs reflect that. While the 2008 CSR Handbook makes it clear that *pro se* cases are not to be closed as "court decisions," which rule TRLA follows, it is our position that the extent of our involvement in these cases warranted a "court decision" closing prior to 2008, absent a clear definition from LSC.

Three Del Rio cases were listed by LSC as having been closed incorrectly as "agency decision." We disagree with this assessment, under the previous CSR handbook. There was an administrative agency decision in each case, and an actual hearing took place in one of them, as follows:

11-17617: Client was being denied a passport and was being told she had ceased to be a U.S. citizen. TRLA filed paperwork on client's behalf and communicated with the U.S. Citizenship & Immigration Services, obtaining a successful outcome for the client. LSC states that it should have been closed as "brief service," but we feel that "agency decision" was the correct closing under pre-2008 rules.

02-1116443 (incorrectly listed by LSC as 02-111644): TRLA represented client at a housing authority hearing. LSC states that this case should have been closed as “negotiated settlement.” We feel that “agency decision” is correct under both the old and new rules.

11-17478: TRLA represented client in immigration court, but that proceeding was dismissed without prejudice so client could complete the process of filing and adjusting immigration status. Ultimately the United States Customs and Immigration Services agency official, not a judge, granted adjustment of immigration status for client independent of the earlier court proceeding. LSC states that this should have been closed as a “court decision,” but TRLA disagrees as client received primary relief in the administrative agency decision.

01-93463: The reason for closing of Edinburg open file 01-93463 (closed in 2008) has been corrected to “negotiated settlement” as suggested by LSC.

Please also note an additional file number correction on p. 24: Weslaco closed 2006 file listed as 09-32705 in the report is actually 08-32705.

*p. 25-26 of report:*

**Finding 10: Timely closing of cases.**

LSC states that nine of the closed 2007 files reviewed were untimely, citing that each was opened prior to September 30, but had no written documentation that they be held open into 2007. Although TRLA agrees that there was no specific documentation stating such in those exact words, there was an abundance of documentation indicating why several of the cases were held open:

72-43237 was opened on September 14, accepted for extended services on September 26, and shows 204 log entries documenting work being done on the case until June of the following year. It is our opinion that this documentation complies with the LSC requirement.

64-11284 was accepted on September 14 and contains 131 log entries through August of the following year showing the work that was being done on the case. Again, we feel that this complies with the LSC requirement.

64-11274 was accepted on September 8, and as with the above cases, contains numerous log entries showing the work being done until case closure the following January.

03-157715 was accepted on September 22 and has log entries into the following year. Although it was eventually closed as “counsel and advice” because of changes that took place in the case, there was documentation to show why it was kept open.

72-43242 was a case on behalf of a victim at a domestic violence shelter. The case was accepted on 9/20/06, and there are many log entries to indicate that it was kept open because the client had left the shelter and staff was waiting for her to get back in touch.

72-38552 was opened in October 2005 and closed in September 2007 as “brief service” (not “advice” as listed in the report). Because this was an immigration case which required obtaining numerous documents from the client (all of which is documented in the CTS), we feel that it was closed appropriately with appropriate documentation.

The nature of the legal issues that confront our clients often make it difficult for staff to immediately provide the advice and brief service (now limited action) that the client needs. As demonstrated by the cases above, the provision of services often requires many phone calls, gathering of documents and additional information, and navigation of the judicial or administrative system to provide assistance and, when appropriate, to verify the outcome of the assistance provided, and the above cases demonstrate that. In each of these cases TRLA provided the services in the year that the case was closed.

Among the open files, LSC notes a number of dormant/untimely cases. We agree that there were problems with some of the cases listed, but take issue with the following:

72-39593 is a *pro bono* case opened in January 2006. There are numerous log entries showing attempts to contact the private attorney and checking court docket records regarding the case. LSC has always given leeway to programs reporting *pro bono* cases in terms of timeliness because it is not always easy to get information from a volunteer attorney. This file was opened in 2006 and closed in 2007, within one year of the date the attorney actually closed it.

08-32870 was opened on September 25, 2006 and closed in August 2007 as “counsel and advice.” There are 44 log entries showing that work was done during that time period, even though there is not an actual notation about “why” it was kept open (which reason is obvious from reading log entries). We therefore believe that this case was closed on a timely basis.

On page 26, the LSC report discusses an open Austin TAJ file opened in November 2007 and closed in June 2008, but does not include a file number. Advice was provided in January 2008, but LSC notes that the file lacks documentation of any activity until that time. However, because of the fact that the file was opened after September 30, TRLA assumes that LSC does not consider this case untimely.

OCE reviewed a number of open PAI files handled through TRLA’s relationship with Volunteer Lawyer Services (VLS) of Austin, and lists four files about which TRLA had received no response from VLS. TRLA is reviewing its reporting of VLS cases in order to prevent future problems.

TRLA agrees to deselect any 2008 cases considered untimely.

*p. 27 of report:*

**Finding 11: Single recording of cases.**

TRLA agrees that the Corpus Christi case cited in the report is a duplicate, and will continue its efforts to prevent this from happening. (Correction of file #: 02-1116136.)

*p. 29 of report:*

**Finding 15: PAI**

LSC cites in footnote 13 that among the cases in the PAI case list provided by TRLA, it found three cases in which a staff attorney provided assistance. TRLA is well aware of the requirements and attempts to avoid these errors. After review, we agree that the two closed cases were reported in error as PAI. We have changed the fund code on open case 17-13524 (which was closed in 2008) so that it will be reported properly.

*p. 30-31 of report:*

LSC incorrectly reports “VLP Contracts” as part of the Volunteer Lawyer Project in Corpus Christi. TRLA’s PAI contracts (incorrectly referred to as VLP contracts), have two components: (1) a domestic violence contract component, described below, and (2) general contracts, which involve cases other than domestic violence, which are overseen by TRLA’s PAI coordinator.

Since April 2007 the bilingual assistant domestic violence PAI Coordinator in the San Antonio office has facilitated the placement and coordinates all aspects of the domestic violence contracts. (Prior to this, when a non-Spanish-speaking individual held the assistant coordinator position, all Spanish-speaking clients were referred to one of the two PAI coordinators in the Corpus Christi office.)

Duty Attorneys, upon exhausting other placement options for priority family law and domestic violence cases, may request that a case be considered for placement with a private attorney through a PAI contract. The domestic violence PAI coordinator (a family law team manager and attorney), reviews the case and determines if it is appropriate for placement under the program. If the case is approved for placement, the client is forwarded a letter requesting that s/he complete and return a representation agreement, a citizenship statement and a Part 1636 client statement of facts form.

The contract attorney is forwarded a contract setting forth the payment systems, hourly rates, and maximum allowable fees. Under the terms of the contract, attorneys are paid at a rate of \$50.00 an hour generally up to \$1,200 for the more complex cases and \$600 for all other cases. At the completion of the case, the attorney is required to send to the assistant domestic violence PAI coordinator in the San Antonio office the final orders obtained in the case and an itemized hourly billing statement. The assistant coordinator scans these documents into the CTS and forwards the originals to the domestic violence PAI coordinator in Houston, who in turn approves the documents and sends them to the Weslaco office for payment.

Update: Effective September 2008, a family law attorney in the Austin office has assumed the contract responsibilities of the domestic violence PAI coordinator in Houston.



*p. 33 of report:*

A few corrections of LSC's description of Austin PAI are in order: Qualified applicants meet with either a TRLA advocate or a private attorney. Depending on the type of case, applicants may review preliminary informational handouts and/or complete a questionnaire for the type of legal problem. Then, LSC-eligible applicants consult with either TRLA staff attorneys or private volunteer counsel. All applicants receive advice, and a recommendation is made as to whether further legal assistance is warranted from TRLA or by a post-clinic referral to the VLS program to seek private volunteer counsel. All recommended dispositions that further legal assistance be provided eligible applicants are reviewed following the clinics by TRLA staff and notifications of such dispositions are made to all such applicants.

TRLA recognizes a need for changes in the system of disposition reports and oversight, and as mentioned previously, is in the process of making changes.

*p. 34 of report:*

TRLA is in agreement that there have been mistakes made in the reporting of El Paso *pro bono* cases, and has worked with the staff to correct this.

*p. 37 of report:*

**Finding 20: Restrictions on legal assistance with respect to criminal proceedings.**

1. Corpus Christi case:

LSC questions whether TRLA's assistance in a criminal proceeding in Corpus Christi (64-11847) was permitted under the authorized exception which "permits such legal assistance when professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being represented by the recipient."

We feel that a review of the case history is in order: TRLA's client is an older disabled man who in addition to other diagnoses has moderate to advanced dementia, and receives SSI. He lives in an apartment pursuant to a Section 8 voucher and had lived there since 2003 without problems. (Prior to 2003 he was living in a nursing home and before that with his parents.) He attends adult day care during the day. A difficult neighbor moved into the adjacent apartment complex in 2007 and began blocking the garbage dumpster with her car, instigating a series of disputes with the client. On the day of the incident at issue, when the adult day care center van arrived to pick up the client, the driver saw and heard the client and his neighbor exchanging words, and the client asking the neighbor, in a distressed voice, to leave him alone. The neighbor continued to curse and berate the client. As the client was trying to head to the bus, the driver saw the neighbor approach the client with a chair in a threatening manner. The client then raised the cane he uses to walk with, to protect himself from the chair. When the chair hit the cane, the neighbor lost her balance and fell. She contacted police.

The apartment complex then sought to evict the client and the Housing Authority of Corpus Christi terminated client's section 8 voucher. TRLA accepted the case to represent the client in the eviction proceedings. During our investigation we obtained an affidavit from the driver that led us to the conclusion that the client was being falsely accused. Due to his mental condition, client had difficulty understanding the nature of the eviction issues and proceedings, and was unable to defend himself. While eviction proceedings were underway, TRLA learned that there was a criminal misdemeanor case pending against client involving the incident alleged as the basis for eviction. Initially, social workers advised TRLA that the assistant district attorney handling the case would not recommend prosecution. However, TRLA was later informed that the criminal case was on the court's docket, although there had been no arrest and no warrant issued.

Both the eviction case and the criminal case stemmed from this same incident. If the client were found to have committed assault in the criminal case, then there would be grounds to evict and revoke his Section 8 voucher, thereby denying client's eligibility from future housing assistance for 3 years and leaving him with no independent housing options given his limited income. Following a review of the witness's affidavit, counsel for the landlord agreed with TRLA's evaluation of the case, and dismissed the eviction. TRLA represented Mr. Garcia in an administrative hearing regarding termination of his Housing Choice Voucher. The Hearing Officer overturned the Housing Authority's decision, and the Authority was required to continue paying housing assistance payments without interruption.

TRLA worked with various social workers from public agencies to find a new apartment for client to move. The prosecution subsequently dismissed the criminal case when the complaining witness was subpoenaed and failed to appear for trial.

It is important for purposes of 1613.4(b) to note that the housing case came first. Staff found out about the criminal case only after extensive calls and inquiries at the courthouse. Per External Opinion No. EX-2002-1005: this exception has been interpreted by LSC's Office of Legal Affairs ("OLA") to apply only to criminal proceedings for which charges are brought *after* an attorney-client relationship has been established by the client and the LSC recipient (or sub-grantee) in a civil case, and for proceedings which arise out of the civil case. The section does not authorize representation in a criminal proceeding if the defendant has not previously requested assistance from the LSC recipient (or sub-grantee) in connection with the subject matter of the criminal charge.

Furthermore, the Texas Rules of the Professional Conduct - Rule 1.01 Competent and Diligent Representation states as follows:

Rule 1.01

*(b) In representing a client, a lawyer shall not:*

*(1) neglect a legal matter entrusted to the lawyer; or*

*(2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.*

The comments to the Rule state:

*6. Having accepted employment, a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence. As provided in paragraph (a), an incompetent lawyer is subject to discipline.*

It is TRLA's position that we were obligated to address all legal matters related to the incident that prompted the eviction and voucher termination proceeding, and that the ancillary criminal case was therefore properly accepted. We also think that it should be included in our 2008 CSRs, but request guidance from LSC on this question.

## 2. Victoria

LSC's finding that the Victoria office had provided services in two criminal cases is erroneous, and this paragraph should be deleted from the final report. In neither of these cases did TRLA represent a client in criminal court proceedings. The cases are as follows:

In 65-10429 the client's legal problem reported to TRLA was that he wanted to recover his car and car title from a salvage yard. The client had left his car parked at the opponent's salvage yard with his permission, but when he went to get his car, the opponent demanded storage fees of \$400. The client reported to the police that the opponent had stolen his car. Client then sued the opponent in a Justice of the Peace court, and the JP determined that the client owed \$400 in storage fees. Subsequently, the opponent broke into the client's house and stole the title to his car, and the client attempted, unsuccessfully, to file criminal charges *against the opponent*. TRLA has not provided representation to the client in any criminal proceeding.

In 65-10247 the client wanted advice about what to do after she stole a credit card, used it on some merchandise, then returned the card and merchandise to the person she stole it from. No criminal charges are pending, and TRLA has not entered an appearance in a criminal case.

Since the statute applies to criminal proceedings (the adversarial judicial process prosecuted by a public officer), it is our position that neither of these cases is subject to this restriction.

*p. 39 of report*

### **Finding 25: Solicitation**

Please note that the section entitled "Solicitation" (Section 1638) primarily speaks of the prohibition of using LSC funds for...suicide, euthanasia, etc., which is the text of the following paragraph in the report. TRLA assumes that LSC found no compliance problems regarding solicitation.

**Required Corrective Action listed by LSC:**

1. Default to telephone intake within CTS, in all offices other than TAJ, should be removed. **This has been done.**
2. Revise financial eligibility policy to conform with 45 CFR 1611.3(d)(1): assets. **This will be addressed at the next meeting of the board of directors.**

Regarding the following points, TRLA's policies are in compliance, and we will continue to train staff in order to try to maintain such compliance:

3. Ensure compliance with 45 CFR 1611.9(a): retainer agreement
4. Ensure compliance with 45 CFR 1626.6 and 1626.7: signed USC declaration and documentation of eligible alien
5. Ensure compliance with CSR handbook:

2.3 & 2.3 (sic): legal information does not count as a case for CSR purposes.

3.2 (single recording of cases), 3.3 (timely case closing) and 3.6 (limitation of defaults, which cannot include income, assets, # in household, USC/alien status, and LSC eligibility)

5.2 (documentation of eligibility, preserved for 5 years), 5.3 (income documentation requirements), 5.5 (citizenship & alien documentation), 5.6 (documentation of legal assistance)

10.5 (PAI case documentation)

**Recommendations from LSC:**

1. Review defaults in various offices to ensure accuracy
2. Review de-selection & consider adding "LSC Reportable: Y/N" field
3. Review CTS info periodically
4. Review Parts 1626 (alien regulation) and 1636 (statement of facts) used in various offices to ensure uniformity
5. Ensure retainer agreements are complete and present when required
6. Ensure staff is trained on case closure categories.

TRLA is in agreement with all of the above recommendations except for #2. As noted previously, all eligible cases (which refers to both 1611 and 1626), are reportable to LSC. To require additional data entry or additional fields of data is simply unnecessary and could lead to additional confusion and reporting problems.