



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

**Three Rivers Legal Services, Inc.**  
Case Service Report/Case Management System Review  
January 30 – February 2, 2012

Recipient No. 610061

## **I. EXECUTIVE SUMMARY**

**Finding 1:** TRLS' automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. Jacksonville Area Legal Aid ("JALA") managed files evidenced an ineffective ACMS.

**Finding 2:** TRLS' intake procedures and case management system generally support the program's compliance related requirements. TRLS' current financial eligibility policy is not consistent with the requirements of 45 CFR § 1611.3.

**Finding 3:** TRLS managed files evidenced substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines ("FPG"). JALA managed files evidenced non-compliance with these requirements.

**Finding 4:** TRLS managed files evidenced substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d), and CSR Handbook (2008 Ed., as amended 2011), § 5.4. Two (2) JALA managed files reviewed did not comply with these requirements.

**Finding 5:** TRLS managed files evidenced substantial compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). JALA managed files evidenced non-compliance with this part.

**Finding 6:** Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).

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

**Finding 8:** TRLS managed files evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). One (1) JALA managed file did not comply with these requirements.

**Finding 9:** Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).

**Finding 10:** TRLS' application of the CSR case closure categories is substantially consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011).

**Finding 11:** TRLS managed files evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. One (1) JALA managed file reviewed did not comply with this requirement.

**Finding 12: Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.**

**Finding 13: Discussions with TRLS staff did not reveal any violations of the requirements of 45 CFR Part 1604 (Outside practice of law).**

**Finding 14: Sampled cases and materials reviewed evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

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

**Finding 16: A review of TRLS' accounting and financial records evidenced substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). Some TRLS donor notification letters reviewed were found to be inconsistent with the requirements of 45 CFR § 1610.5(a).**

**Finding 17: TRLS is in substantial compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of TRLS managed PAI case files were in substantial compliance with 45 CFR § 1614.3(d)(3). With regard to JALA managed PAI cases, TRLS conducted continuous oversight which was ultimately ineffectual and the subgrant was therefore not renewed. TRLS' 2012 PAI Plan is inconsistent with the requirements of 45 CFR § 1614.4(b) which requires that recipients develop an annual PAI plan through community consultation and document its presentation of the plan to all local bar associations. TRLS is in substantial compliance with 45 CFR § 1614.3(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities, and that non-personnel costs are allocated on the basis of reasonable operating data.**

**Finding 18: TRLS is in substantial compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

**Finding 19: TRLS is in compliance with 45 CFR Part 1635 (Timekeeping requirement).**

**Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

**Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

**Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and actions collaterally attacking criminal convictions).**

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

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

**Finding 25: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings).**

**Finding 26: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1637 (Representation of prisoners).**

**Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

**Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

**Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).**

**Finding 30: TRLS evidenced compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).**

**Finding 31: A limited review of TRLS' internal control policies and procedures revealed weaknesses that are inconsistent with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.).**

## II. BACKGROUND OF REVIEW

On January 30 through February 2, 2012, the Legal Services Corporation's ("LSC") Office of Compliance and Enforcement ("OCE") conducted a Case Service Report/Case Management System ("CSR/CMS") review at Three Rivers Legal Services, Inc. ("TRLS"). The purpose of the visit was to assess the program's compliance with the LSC Act, regulations, and other applicable LSC guidance such as Program Letters, the Accounting Guide for LSC Recipients (2010 Ed.), and the Property Acquisition and Management Manual. The visit was conducted by a team of two (2) attorneys and two (2) fiscal analysts. All team members were OCE staff.

The on-site review was designed and executed to assess the program's compliance with basic client eligibility, intake, case management, regulatory and statutory requirements and to ensure that TRLS has correctly implemented the 2008 CSR Handbook. Specifically, the review team assessed TRLS for compliance with the regulatory requirements of: 45 CFR Part 1611 (Financial eligibility); 45 CFR Part 1626 (Restrictions on legal assistance to aliens); 45 CFR §§ 1620.4 and 1620.6 (Priorities in use of resources); CFR § 1611.9 (Retainer agreements); 45 CFR Part 1636 (Client identity and statement of facts); 45 CFR Part 1604 (Outside practice of law); 45 CFR Part 1608 (Prohibited political activities); 45 CFR Part 1609 (Fee-generating cases); 45 CFR Part 1610 (Use of non-LSC funds, transfers of LSC funds, program integrity); 45 CFR Part 1614 (Private attorney involvement);<sup>1</sup> 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1635 (Timekeeping requirement); 45 CFR Part 1642 (Attorneys' fees)<sup>2</sup>; 45 CFR Part 1630 (Cost standards and procedures); 45 CFR 1612 (Restrictions on lobbying and certain other activities); 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings and Restrictions on actions collaterally attacking criminal convictions); 45 CFR Part 1617 (Class actions); 45 CFR Part 1632 (Redistricting); 45 CFR Part 1633 (Restriction on representation in certain eviction proceedings); 45 CFR Part 1637 (Representation of prisoners); 45 CFR 1638 (Restriction on solicitation); 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, or mercy killing); and 42 USC 2996f § 1007 (Abortion, school desegregation litigation and military selective service act or desertion).

The OCE team interviewed members of TRLS' upper and middle management, staff attorneys and support staff. TRLS' case intake, case acceptance, case management, case closure, and Private Attorney Involvement ("PAI") practices and policies in all substantive units were assessed. In addition to interviews, a case file review was conducted. The sample case review period was from January 1, 2009 through December 15, 2011. In accordance with the approved work plan, a total of 178 case files were reviewed. OCE reviewed files from the main office in Gainesville, and the branch offices in Jacksonville and Lake City.

TRLS currently provides legal services to eligible clients in the following counties in North Florida: Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, St. Johns, Suwannee, Taylor, and Union. TRLS provides

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

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

client services at three (3) offices located in the cities of Gainesville, Jacksonville, and Lake City. The administrative office of the program, as well as TRLS' central office, is located in Gainesville, Florida.

TRLS received grant awards from LSC in the amounts of \$1,914,642.00 for 2009, \$2,067,313.00 for 2010, and \$1,981,855.00 for 2011. In its 2010 CSR submission to LSC, the program reported 3,699 closed cases; in its 2009 CSR submission to LSC, the program reported 3,674 closed cases. TRLS' 2010 self-inspection certification revealed a 2% error rate in CSR reporting. TRLS' 2009 self-inspection certification revealed a 2.7% error rate in CSR reporting.

It should be noted that TRLS' Jacksonville Office maintained a subgrant with Jacksonville Area Legal Aid ("JALA") to carry out its PAI practice through 2011. TRLS maintained its subgrant with JALA for six (6) years and reportedly chose not to renew the subgrant in 2012 due to compliance deficiencies. TRLS provided the review team with evidence of its continuous oversight and efforts to assist JALA in complying with LSC's regulatory requirements, however those efforts were ultimately ineffectual and the subgrant was therefore not renewed. Case review conducted by the review team highlighted these deficiencies and many of the findings contained in this report resulted from JALA files.

By letter dated November 29, 2011, OCE requested that TRLS provide a list of all cases reported to LSC in its 2009 CSR data submission (closed 2009 cases), a list of all cases reported in its 2010 CSR data submission (closed 2010 cases), a list of all cases closed between January 1, 2011, and December 15, 2011 (closed 2011 cases), and a list of all cases which remained open as of December 15, 2011 (open cases). OCE requested that the lists contain the client name, the file identification number, the name of the advocate assigned to the case, the opening and closing dates, the CSR case closure category assigned to the case, and the funding code assigned to the case. OCE requested that two sets of lists be compiled - one for cases handled by TRLS staff and the other for cases handled through TRLS' PAI component. TRLS was advised that OCE would seek access to such cases consistent with Section 509(h), Pub.L. 104-134, 110 Stat. 1321 (1996), LSC Grant Assurance Nos. 10, 11, and 12, and the LSC *Access to Records* protocol (January 5, 2004). TRLS was requested to promptly notify OCE, in writing, if it believed that providing the requested material in the specified format would violate the attorney-client privilege or would be otherwise protected from disclosure.

Thereafter, an effort was made to create a representative sample of cases that the OCE team would review during the on-site visit. The sample was developed proportionately among 2009, 2010, 2011 closed, and open cases. The sample consisted largely of randomly selected cases, but also included targeted cases selected to test for compliance with the CSR instructions relative to timely closings, proper application of the CSR case closure categories, duplicate reporting, etc.

During the visit, access to case-related information was provided through staff intermediaries. Pursuant to the OCE and TRLS agreement of January 13, 2012, TRLS staff maintained possession of the file and discussed with the team the nature of the client's legal problem and the nature of the legal assistance rendered. In order to maintain confidentiality, such discussion, in some instances, was limited to a general discussion of the nature of the problem and the nature of

the assistance provided.<sup>3</sup> TRLS' management and staff cooperated fully in the course of the review process. As discussed in greater detail below, TRLS was made aware of compliance issues during the on-site visit. This was accomplished by informing intermediaries, as well as the Executive Director, of any compliance issues uncovered during case review.

At the conclusion of the visit, on February 2, 2012, OCE conducted an exit conference during which TRLS was provided with OCE's initial findings and was made aware of any areas in which compliance issues were found. TRLS was advised that they would receive a Draft Report that would include all of OCE's findings and they would have 30 days to submit comments.

By letter dated April 20, 2012, OCE issued a Draft Report ("DR") detailing its findings, recommendations, and Required Corrective Actions regarding the January 30 through February 2, 2012 CSR/CMS visit. TRLS was asked to review the DR and provide written comments. By emails dated May 21, 2012 and May 25, 2012, TRLS indicated that it has implemented the Required Corrective Actions issued by OCE in the DR. TRLS' comments are reflected in this Final Report and have been attached as an appendix hereto.

### III. FINDINGS

**Finding 1: TRLS' automated case management system ("ACMS") is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. JALA managed files evidenced an ineffective ACMS.**

Recipients are required to utilize ACMS and procedures which will ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. At a minimum, such systems and procedures must ensure that management has timely access to accurate information on cases and the capacity to meet funding source reporting requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.1.

Based on a comparison of the information yielded by the ACMS to information contained in the case files sampled, TRLS' ACMS is generally sufficient to ensure that information necessary for the effective management of cases is accurately and timely recorded. One (1) exception was noted where a closed file reviewed was coded as a closed "PAI" case, although it was unclear whether it should have been coded as a "staff" case or reopened because TRLS closed the file after providing Counsel and Advice to the client and, although it referred the client to one of its PAI practitioners, the program has not been providing follow-up and oversight on the case. *See* closed 2011 PAI Case No. 11-0251957. TRLS should ascertain whether this client is or was represented by the PAI attorney, and, if so, should provide proper oversight and follow-up, as required by 45 CFR § 1614.3(d)(3); however, if the client was never represented by the PAI attorney, TRLS should change the coding in the ACMS to reflect that it was a "staff" case. One (1) file was identified as containing information inconsistent with the information yielded by the ACMS, as the funding code in the file differed from the funding code appearing on the

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

case list. *See* closed 2011 Case No. 11-0251187. Two (2) files were found to be indicated for exclusion from TRLS' CSR data submission, but the reason for their exclusion was not apparent from reviewing the files. *See* closed 2011 Case Nos. 11-0250526 and 11-0254975. One (1) other exception noted resulted from an income screening conducted on one (1) applicant, whose legal issues resulted in four (4) separate cases being opened. The client's reported income at intake was under TRLS' annual income ceiling of 125% of the Federal Poverty Guidelines ("FPG"), but while receiving services the client informed TRLS of an increase in income and the case handler therefore recorded the newly reported income amount as well as authorized exceptions to TRLS' annual income ceiling. The ACMS indicated that the client's adjusted income, presumably after exceptions authorized by 45 CFR § 1611.5 were deducted from the newly reported income, was 124.88% of FPG, but the ACMS fields containing the exceptions could not be viewed or printed. *See* closed 2010 Case Nos. 10-0243833, 10-0243834, 10-0245823, and 10-0245993.

Review of JALA managed files evidenced an ineffective ACMS. Two (2) files reviewed evidenced intake and open dates that did not match those dates listed on the case lists provided. *See* open JALA Case Nos. 10-0296280 and 11-0305688. Five (5) files reviewed evidenced problem codes that differed from the problem codes that appeared on the case lists provided, and the problem codes on the case lists were inaccurate. *See* closed 2011 JALA Case Nos. 10-0296108 (problem code 95 on case list, but 63 in case file), 10-0298956 (problem code 95 on case list, but 9 in case file), 10-0297668 (problem code 39 on case list, but 62 in case file), 11-0310199 (problem code 95 on case list, but 3 in case file), and 11-0307137 (problem code 95 on case list, but 32 in case file).

As it appears that some of the ACMS inconsistencies found in TRLS managed cases during case review were a result of technological error, it is recommended that TRLS review its ACMS' capabilities to ensure that it can be relied upon for the effective management of cases and the accurate reporting of cases to LSC in the CSR.

Although JALA managed files evidenced an ineffective ACMS, TRLS has already taken appropriate action to correct the problem, as it did not renew JALA's PAI subgrant in 2012. In consideration of this action by TRLS, no further remedial action is necessary.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 2: TRLS' intake procedures and case management system generally support the program's compliance related requirements. TRLS' current financial eligibility policy is not consistent with the requirements of 45 CFR § 1611.3.**

TRLS has recently implemented a centralized intake system in the form of a Legal Helpline ("LHL"). Each office maintains LHL staff, although the LHL Managing Attorney is based out of the Jacksonville Office. Walk-in intakes are only conducted on an emergency basis.



### Legal Helpline Intake Procedure

The LHL operates between the hours of 8:30 a.m. and 5:00 p.m. Monday thru Friday. When a prospective applicant contacts the LHL, they are greeted by an Intake Specialist who conducts a thorough eligibility screening. Intake Specialists are located at each TRLS office, and calls are automatically routed to an available Intake Specialist. If all Intake Specialists are unavailable, a caller has the option of leaving a message or calling back at a later time. Once the eligibility screening has been conducted, and if the applicant is eligible for services, the applicant is informed of their eligibility and scheduled for a telephone appointment with an LHL Staff Attorney. If it is necessary for an applicant to provide documentation related to their legal issue in order for the LHL Staff Attorney to provide Limited Services, it must be done before an appointment can be scheduled. An applicant that needs to provide documentation is provided a fax number and/or an email address where the documents can be sent.

A maximum of 18 telephone “intake” appointments can be scheduled per day for LHL Staff Attorneys to “meet” with applicants. If an applicant calls and all appointment slots have been filled for the week, the Intake Specialist will proceed with the eligibility screening and eligible clients will be instructed to contact the office on the following Monday to schedule their appointment. If an applicant walks-in to a TRLS office, the applicant is first asked to sign a citizenship attestation or to provide alien eligibility documentation, then they are directed to a telephone in the waiting area and instructed to call the LHL. During a scheduled “intake” appointment, LHL Staff Attorneys must first verify an applicant’s pre-screen and eligibility information collected by LHL Intake Specialists in order to consider them an accepted client for the purpose of providing Limited Services.

Under the supervision of the LHL Managing Attorney, Intake Specialists disseminate cases to LHL Staff Attorneys, Office Managing Attorneys, and TRLS Clinics based on “Stage 1 Case Processing Guidelines” (“Stage 1 CPG”) that are laid out in a spread sheet and available to all Intake Specialists. *See Case Processing Guidelines, Stage 1 (January 17, 2012)* (Stage 1 CPG were provided to OCE review team while on-site). The Stage 1 CPG directs cases based on legal subject matter and other specific factors such as county, court circuit, and other case specific factors. After Limited Services are provided to clients by LHL Staff Attorneys, “Stage 2 Case Processing Guidelines” (“Stage 2 CPG”) are used to provide guidance regarding what the next step should be for the case. *See Case Processing Guidelines, Stage 2 (October 1, 2011)* (Stage 2 CPG were provided to OCE review team while on-site). Based on the legal subject matter and other case specific factors, the Stage 2 CPG assists the LHL Managing Attorney in determining which cases should be closed after receiving LHL services and which cases should be forwarded to Office Managing Attorneys or the Pro Bono Coordinator for possible Extended Services.

### Eligibility Screening and Compliance

- Conflict and Duplicate Case Checks

LHL Intake Specialists conduct a ‘pre-screening’ to verify that an applicant’s legal issue was within TRLS’ priorities, that the caller resided in a county represented by TRLS, and that the applicant’s total household income is not over 200% of the FPG before collecting information

related to adverse parties and aliases of the applicant. Once this information is collected, LHL Intake Specialists run a program-wide conflict check that would also identify any duplicate cases.

• *Income and Asset Screening*

During the review it was determined that LHL Intake Specialists relied on the ACMS for calculations related to income and asset eligibility. LHL Intake Specialists asked and recorded appropriate financial eligibility questions and questions related to 45 CFR § 1611.5 authorized exceptions, when necessary, in the order that they appeared on the ACMS.

- *Income Exceptions Spend-down*

As will be discussed *infra* in Finding 3, TRLS' written financial eligibility policy is outdated and does not reflect the program's current practices. Based on the written policy, the review team understood prior to the visit that TRLS utilized a spend-down method when calculating applicants' income by subtracting any expenses authorized as exceptions by 45 CFR § 1611.5. While on-site, the review team was informed that the program's financial eligibility screening practice did not utilize a spend-down method. While observing a mock eligibility screening conducted by an LHL Intake Specialist, it was apparent that the ACMS *did* spend-down an applicant's income when expenses were recorded in the ACMS. In other words, the ACMS subtracted recorded expenses from an applicant's total income and displayed, on the ACMS screen, the "new" income amount and FPG calculation while also displaying the original income amount. Although the experienced LHL Intake Specialist being observed indicated her awareness that TRLS does not spend-down an applicant's income, it appeared that having the ACMS reduce an applicant's income could only add confusion to the newly implemented LHL centralized intake system. Furthermore, having the ACMS spend-down an applicant's income may be confusing to newly hired staff and it also contradicts what the review team was told was the program's current practice of *not* utilizing a spend-down method. Although it is not a compliance issue, it is strongly recommended that TRLS adjust its ACMS so that it parallels TRLS' current practice, and its financial eligibility policy currently under revision, which, according to TRLS, does not contain a spend-down policy.

- *Reasonable Income Prospects*

Questions related to prospective income were not asked or recorded by LHL Intake Specialists, as required by 45 CFR § 1611.7(a)(1).

- *Vehicles Used for Transportation*

TRLS' asset screening contained several questions related to vehicles owned by members of an applicant's household which are much more stringent than the Federal Regulations require. With regard to the requirement that recipients establish reasonable asset ceilings, 45 CFR § 1611.3(d)(1) states that a recipient "...may exclude consideration of...*vehicles* used for transportation...[emphasis added]." It is the policy and practice of TRLS to exclude equity in only one (1) vehicle per household, and only up to \$15,000. This policy, designed to limit

applicant eligibility, resulted in Intake Specialists spending a large amount of time asking questions related to the make and model of vehicles owned by the applicant and other household members and checking the Blue Book Values of the vehicles during the course of the eligibility screening. It is a recommendation that TRLS consider revising this requirement in its financial eligibility policy, as it is unnecessarily time consuming and cumbersome to LHL Intake Specialists.

- Citizenship and Eligible Alien Screening

LHL Intake Specialists evidenced that they asked and recorded citizenship and alien eligibility information appropriately during the intake screening process. LHL Intake Specialists stated that for applicants indicating an eligible alien status, they would record the applicable card number and instruct those applicants who would be visiting an office location to bring the documentation with them. LHL Intake Specialists also indicated that they would contact the LHL Managing Attorney if they had any questions related to an applicant's eligibility. Interviews further revealed that an applicant or client who appeared unannounced at an office location would be asked to complete a written citizenship attestation or, when applicable, their alien eligibility documentation would be viewed and recorded. This screening would also be conducted with applicants appearing in an office for the purpose of utilizing a TRLS telephone to call the LHL.

- VAWA

LHL Intake Specialists demonstrated an understanding of the applicability of 45 CFR § 1626.4 and Program Letter 06-02, Violence Against Women Act 2006 Amendments.

- Group Eligibility

LHL Intake Specialists interviewed indicated that they had never conducted a group eligibility screening, but would refer any such cases to the respective office's Managing Attorney. The review team was provided a Group Client Application ("GCA") form utilized by TRLS that is generally compliant with the requirements of 45 CFR § 1611.6, although some improvements are warranted. The GCA form adequately collects information that reasonably demonstrates that the group has as a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and that the legal assistance relates to such activity. The GCA form, however, should be improved to collect evidence showing that a 45 CFR § 1611.6(a)(1) group is primarily composed of individuals who would be eligible for LSC-funded legal assistance, instead of TRLS' current practice of having the group declare that it is primarily composed of persons who are financially eligible in their "Group, Corporation or Association Representation Retainer." An applicant group cannot, itself, make this determination. Additionally, although the GCA requests that a copy of income and expenses be attached, a number of cases lacked this evidence, as discussed *infra* in Findings 3 and 4, and therefore did not comply with 45 CFR § 1611.6(a) which requires that the applicant group provide information that it has no practical means of obtaining private counsel. The GCA form could therefore be further improved by including questions related to this requirement.

• Clinics and Outreach

TRLS reports that it conducts Outreach, although legal services are not provided to attendees. Outreach conducted by TRLS is for the purpose of providing information about TRLS to specific groups and also to conduct legal education workshops regarding specific subject matter. Attendees are not considered clients of TRLS.

TRLS reports that due to financial and staffing constraints, it currently coordinates only two (2) clinics; a Divorce Clinic which is held in Lake City and a Small Claims Clinic which is held in Gainesville. Advocates providing services at both clinics are private attorneys participating in TRLS' PAI component, pursuant to 45 CFR Part 1614. Attendees of both clinics are pre-screened for eligibility by the LHL and given an appointment to attend the clinic. Attendees of the clinics are required to sign a citizenship attestation form or provide alien eligibility documentation upon arrival. All attendees meet individually with attorneys, they are considered clients of TRLS, and the assistance provided is considered a case for CSR reporting purposes. PAI attorney time is counted towards TRLS' PAI requirement and any assistance or coordination provided by TRLS employees is considered staff time.

Case Management

TRLS maintains Case Handling Protocol ("CHP") in a document available to all staff. *See Case Handling Protocol (10/16/10)* (CHP was provided to the OCE review team while on-site). The CHP describes the protocol to be followed by all Staff Attorneys and Managing Attorneys once a case is assigned.

Cases identified as "advice only" in TRLS' Stage 2 CPG are closed by LHL Staff Attorneys once services have been rendered, and the files are reviewed for sufficiency by the LHL Managing Attorney. When cases are forwarded from the LHL to Office Managing Attorneys, they are reviewed to determine whether the services provided by the LHL were sufficient or if the client would benefit from Extended Services. If an Office Managing Attorney determines that no further services will be provided, a closing letter is sent to the client by staff, the case is closed as an LHL Limited Service case, and the LHL Managing Attorney is informed. Cases deemed appropriate for Extended Services by Office Managing Attorneys are assigned to TRLS Staff Attorneys. Assigned cases are presented for discussion at weekly case acceptance meetings.

Office Managing Attorneys report that they frequently review open cases on the ACMS (and/or case activity reports printed from the ACMS) and discuss any concerns with Staff Attorneys in order to prevent dormancy. Per the CHP, every open file should be reviewed at a minimum of every 90 days and a notation related to the review should be recorded. *See CHP* at page 2, "Case Handling" ¶ 4. Additionally, litigation strategy sessions occur once per month and formal case reviews are conducted twice per year. Office Managing Attorneys report that Staff Attorneys close their own cases, but that they review every closed case for sufficiency.

### *TRLS Financial Eligibility Policy Review*

At the time of the CSR/CMS review, TRLS' existing written financial eligibility policy was not consistent with the requirements of 45 CFR § 1611.3. TRLS' policy left out significant regulatory requirements and did not reflect many of the program's current practices. *See* TRLS Basic Client Income Eligibility Standards (Effective February 2011 – which was provided to the review team in advance of the visit.) (“financial eligibility policy”). TRLS was made aware of this deficiency in advance of the review and indicated that a new policy would be drafted. As noted in Finding 3, although its written financial eligibility policy was insufficient, TRLS' financial eligibility screening practice was generally consistent with the requirements of 45 CFR Part 1611. The deficiencies found in TRLS' financial eligibility policy, as it existed at the time of the review, are discussed below.

### *Basic Requirements of 45 CFR Part 1611*

LSC regulations require that the governing body of a recipient adopt policies consistent with 45 CFR Part 1611 for determining the financial eligibility of applicants and groups. At a minimum, each recipient's financial eligibility policy must: (1) specify that only individuals and groups determined to be financially eligible under the recipient's financial eligibility policies and LSC regulations may receive legal assistance supported with LSC funds; (2) establish an annual income ceiling not to exceed 125% of the Federal Poverty Guidelines; (3) establish asset ceilings; and (4) specify that, notwithstanding any other provisions of the regulation or the recipient's 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 held with the abuser. *See* 45 CFR § 1611.3; *see also*, 70 *Federal Register* 45545, at 45550 (August 8, 2005).

As part of its financial eligibility policy, recipients may adopt authorized exceptions to its annual income ceiling consistent with 45 CFR § 1611.5. *See* 45 CFR § 1611.3(b)(2). Recipients may adopt all, some, or none of the authorized exceptions listed at 45 CFR § 1611.5. In the event that the recipient determines an applicant's financial eligibility based upon consideration of one or more of the authorized exceptions adopted by its governing body, the regulations require that the recipient document the basis for the eligibility determination and maintain such records as may be necessary to inform LSC of the specific facts and factors relied on to make the determination. *See* 45 CFR § 1611.5(b); *see also* CSR Handbook (2008 Ed., as amended 2011), §§ 5.2 and 5.3.

A recipient's financial eligibility policy may also authorize a waiver of the recipient's asset ceiling for specific applicants under unusual circumstances and when approved by the Executive Director or his/her designee. However, when the asset ceiling is waived, recipients are required to document the reasons for the waiver and maintain such records as are necessary to inform LSC of the reasons for such waiver. *See* 45 CFR § 1611.3(d)(2). Additionally, the policy may permit financial eligibility to be determined by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families, provided that the recipient has determined that the income standards of the governmental program are at or below 125% of the FPG and that the governmental program has eligibility standards which include an asset test. *See* 45 CFR §§ 1611.3(f) and 1611.4(c); *see also*, 70 *Federal Register* at 45553.

In making financial eligibility determinations regarding individual applicants for legal assistance, LSC regulations require that recipients make reasonable inquiry regarding sources of the applicant's income, income prospects, and assets. The regulations further require that recipients record income and asset information. The CSR Handbook (2008 Ed., as amended 2011) requires that recipients record the number of members in the applicant's household, the total income received by all members of the applicant's household, and the value of the household assets.

*Required and Recommended Revisions, Pursuant to 45 CFR Part 1611*

In light of the foregoing, several revisions to TRLS' financial eligibility policy are warranted. It should be noted that in preparation for the on-site visit, the review team obtained and reviewed TRLS' current written financial eligibility policy. Based on the written policy provided to the review team, it was assumed that TRLS had made a conscious decision that its asset ceiling would not be waived, that financial eligibility by reference to an applicant's receipt of benefits from a governmental program for low-income individuals or families was not permitted, and that groups clients were purposefully excluded. *See* 45 CFR §§ 1611.3(d)(2), 1611.3(f), and 1611.6. While on-site, the review team was informed that not all of these assumptions were correct and that the practice of TRLS, with regard to financial eligibility screening, was more consistent with what the regulations allow.

TRLS' current financial eligibility policy establishes an annual income ceiling equal to 125% of the 2011 FPG. The financial eligibility policy then defines income and total cash receipts in a manner consistent with 45 CFR § 1611.2(i), except that the definition of total cash receipts neglects to exclude up to \$2,000.00 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute. Just as federal law prohibits the consideration of food stamps as income, *see* 7 USC § 2017(b), consistent with 25 U.S.C. §§ 1407 and 1408, the interests of individual Indians in trust or restricted lands shall not be considered a resource, and up to \$2,000.00 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for any federally assisted program. *See* 45 CFR § 1611.2(h)(i); *see also*, 70 *Federal Register* 45545, 45549 (August 8, 2005) and LSC Office of Legal Affairs External Opinion 99-17 (August 27, 1999). Accordingly, the definition of total cash receipts should be revised to reflect this exclusion.

TRLS' financial eligibility policy must also be revised to include statements similar to the following, as required by 45 CFR §§ 1611.3(b) and (e): (1) only individuals determined to be financially eligible under this policy and LSC regulations may receive legal assistance supported with LSC funds; and (2) in determining the financial eligibility of an individual who is a victim of domestic violence, TRLS will consider only the income and assets of the applicant and members of the applicant's family unit other than those of the alleged perpetrator of the domestic violence, and may not consider the alleged domestic violence perpetrator's income, or assets jointly held between the alleged perpetrator and applicant, or alleged perpetrator and other members of applicants household.

In reviewing the portion of the financial eligibility policy related to authorized exceptions adopted by TRLS, the review team initially assumed that TRLS had made a conscious decision to exclude a number of the authorized exceptions permitted by 45 CFR § 1611.5. Those exceptions thought to be purposefully excluded included the following: (1) applicants whose income exceeds its annual income ceiling, but whose assets do not exceed its asset ceiling, who are seeking legal assistance to maintain benefits provided by a governmental program for low-income individuals and families, *see* 45 CFR § 1611.5(a)(1); (2) applicants whose income exceeds 200% of the applicable FPG, but whose assets do not exceed its asset ceiling, who are seeking legal assistance to obtain or maintain governmental benefits for persons with disabilities, *see* 45 CFR § 1611.5(a)(3)(ii); and (3) applicants whose income does not exceed 200% of the applicable FPG, and whose assets do not exceed its asset ceiling, who have unreimbursed medical expenses and medical insurance premiums, *see* 45 CFR § 1611.5(a)(4)(ii). However, while on-site, the review team was informed that that these assumptions were also incorrect and that the practice of TRLS with regard to authorized exceptions was, again, more consistent with what the regulations allow.

TRLS' current financial eligibility policy also distinguishes between liquid and non-liquid assets. The distinction between liquid and non-liquid assets was abandoned by LSC in favor of language that focuses more on the availability of the asset and the ease of converting the asset to cash. The language of Part 1611 is intended to require that recipients consider all assets upon which an applicant might draw in obtaining private legal counsel. In revising Part 1611, it was determined that "liquid" and "non-liquid" characterizations obscured this understanding. Accordingly, the terms were eliminated, *see* 70 *Federal Register* 45545, 45547 (August 8, 2005), and TRLS is advised to do likewise.

Regarding the asset exclusions contained in its current financial eligibility policy, TRLS is advised that it may choose to continue to "exclude one car per household not exceeding \$15,000 trade in value," but it must specify that it is "one car per household *that is used for transportation* not exceeding \$15,000 trade in value." However, TRLS should take note that the regulations permit recipients to exclude multiple vehicles used for transportation. *See* 45 CFR § 1611.3(d)(1). Similarly, TRLS is advised that, as their current written policy states, "ordinary household property necessary to normal existence as in beds, chairs, appliances; any property where there exists an impediment to applicant's access to asset(s) of the family unit or household, i.e., danger to the applicant or children such as in an abusive family situation; jointly held property of limited value; and in the case of the elderly, institutionalized and handicapped, all assets associated with the condition or as a practical manner unavailable because of it" may be excluded, but only to the extent that such resources are exempt from attachment under federal or state law.

It is recommended that TRLS consider defining assets in its financial eligibility policy. By defining assets as cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant, TRLS can eliminate a great deal of the verbiage contained in its policy. It is further recommended that TRLS consider defining "family unit," as this distinction is crucial in determining whose financial information eligibility screeners must collect.

Additionally, TRLS must adopt language within its policy addressing those situations in which a client experiences a change in financial eligibility, as required by 45 CFR § 1611.8. Language similar to the following is suggested: (1) if, after making a determination of financial eligibility and accepting an applicant for service, TRLS becomes aware that the person has become financially ineligible through a change of circumstances, TRLS shall discontinue representation supported with LSC funds if the change in circumstances is likely to continue and is sufficient to enable the person to afford private legal assistance, and discontinuation is not inconsistent with TRLS' ethical obligations; and (2) if, after making a determination of financial eligibility and accepting an applicant for service, TRLS later determines that the person is financially ineligible on the basis of later discovered or disclosed information; TRLS shall discontinue representation supported with LSC funds if discontinuation is not inconsistent with TRLS' ethical obligations.

Finally, as evidenced by case review conducted by the review team, TRLS engages in the representation of a number of group clients. As this is a practice that TRLS clearly intends to continue, it must include a provision in its financial eligibility policy regarding this practice with clear guidelines related to group eligibility screening, as some of the group cases reviewed lacked the necessary documentation. See 45 CFR § 1611.6.

### **Intake and Financial Eligibility Policy Compliance Overview**

#### **Intake Compliance Overview**

TRLS' intake procedures and case management system generally support the program's compliance related requirements. TRLS must ensure that Intake Specialists inquire and record information related to income prospects, as required by 45 CFR § 1611.7(a)(1). It is recommended that TRLS adjust its ACMS so that it no longer spends-down applicants' expenses so that it parallels its current financial eligibility practice and the written financial eligibility policy currently in development. It is also recommended that TRLS amend its GCA in order to maximize compliance with regard to group eligibility screening. Additionally, it is recommended that TRLS consider revising its current eligibility policy and requirements related to vehicle asset screening as it is unnecessarily time consuming to LHL Intake Specialists and is not required by 45 CFR § 1611.3(d)(1).

#### **Financial Eligibility Policy Compliance Overview**

As noted above, TRLS' existing financial eligibility policy is not consistent with the requirements of 45 CFR § 1611.3 and is currently under revision. Specifically, the definition of total cash receipts neglects to exclude up to \$2,000.00 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute, as required by 45 CFR § 1611.2(h)(i). TRLS' financial eligibility policy must also be revised to include statements that only individuals determined to be financially eligible under its policy and LSC regulations may receive legal assistance supported with LSC funds and that the income and assets of an alleged perpetrator of domestic violence will not be considered during the victim's financial eligibility screening, as required by 45 CFR § 1611.3(b) and (e). Similarly, TRLS must adopt language in its policy in order to guide its practice with



regard to a client's change in financial circumstance, as required by 45 CFR § 1611.8. Additionally, TRLS must specify in its asset exclusions that a vehicle excluded from consideration must be *used for transportation*, and further consider allowing all vehicles used for transportation to be excluded, as permitted by 45 CFR § 1611.3(d)(1). Finally, as TRLS clearly intends to engage in the representation of groups, it must include language in its policy related to this practice in accordance with 45 CFR § 1611.6. It is recommended that TRLS eliminate the distinction between liquid and non-liquid assets, as LSC revised this former practice in 2005 in favor of language that focused more on the availability of assets. *See 70 Federal Register* 45545, 45547 (August 8, 2005). It is further recommended that TRLS consider defining "family unit" and "assets" in its financial eligibility policy.

In response to the DR, TRLS indicated that it drafted a new policy entitled "Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies for LSC Supported Legal Assistance" ("Policy"). TRLS indicated that the Policy was approved by its Board of Directors on February 29, 2012, that the minutes from that meeting were approved at the following Board of Directors meeting on May 16, 2012, and that an email was sent to all TRLS staff on March 2, 2012, with a copy of the Policy attached and an explanation of the changes that were made. In response to the DR, TRLS also provided copies of its new Policy and a copy of the email sent to staff regarding the new Policy. TRLS further indicated that each requirement has been incorporated into its case management manual as well as in its ACMS. OCE reviewed TRLS' new Policy and found that all Required Corrective Actions were sufficiently incorporated into the new Policy and that the Policy is now compliant with 45 CFR Part 1611. It should be noted that OCE's review of the Policy evidenced that TRLS also incorporated into its new Policy all recommendations made by OCE in the DR pertaining to policy revisions.

**Finding 3: TRLS managed files evidenced substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the Federal Poverty Guidelines ("FPG"). JALA managed files evidenced non-compliance with these requirements.**

Recipients may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance. *See* 45 CFR § 1611.4(a). Specifically, recipients must establish financial eligibility policies, including annual income ceilings for individuals and households, and record the number of members in the applicant's household and the total income before taxes received by all members of such household in order to determine an applicant's eligibility to receive legal assistance.<sup>4</sup> *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3. For each case reported to LSC, recipients shall document that a determination of client eligibility was made in accordance with LSC requirements. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.2.

In those instances in which the applicant's household income before taxes is in excess of 125% but no more than 200% of the applicable Federal Poverty Guideline and the recipient provides legal assistance based on exceptions authorized under 45 CFR § 1611.5(a)(3) and 45 CFR §

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<sup>4</sup> A numerical amount must be recorded, even if it is zero. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.3.

1611.5(a)(4), the recipient shall keep such records as may be necessary to inform LSC of the specific facts and factors relied on to make such a determination. *See* 45 CFR § 1611.5(b) and CSR Handbook (2008 Ed., as amended 2011), § 5.3.

For CSR purposes, individuals financially ineligible for assistance under the LSC Act may not be regarded as recipient “clients” and any assistance provided should not be reported to LSC. In addition, recipients should not report cases lacking documentation of an income eligibility determination to LSC. However, recipients should report all cases in which there has been an income eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, if otherwise eligible and properly documented. *See* CSR Handbook (2008 Ed., as amended 2011), § 4.3.

TRLS managed files evidenced substantial compliance with the income eligibility documentation required by 45 CFR § 1611.4, CSR Handbook (2008 Ed., as amended 2011), § 5.3, and applicable LSC instructions for clients whose income does not exceed 125% of the FPG. Five (5) exceptions were noted in group client files. Four (4) of the files properly contained evidence that the groups’ principal activity was “the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance,” as required by 45 CFR § 1611.6(a)(2), but did not contain information showing the groups had “no practical means of obtaining...private counsel,” as required by 45 CFR § 1611.6(a). *See* closed 2009 Case Nos. 08-0236678 and 09-0238932, closed 2011 PAI Case No. 10-0249289, and open PAI Case No. 11-0250867. Two (2) of these files pertained to the same client, which was a community church whose principal activity was the running of a homeless shelter and, according to the intermediary, it was known that the group lacked funds necessary to hire private counsel. *See* closed 2009 Case No. 08-0236678 and closed 2011 PAI Case No. 10-0249289. One (1) group client file did not contain appropriate evidence that it was “primarily composed of individuals who would be financially eligible for LSC-funded legal assistance,” as required by 45 CFR § 1611.6(a)(1). *See* open PAI Case No. 10-0245852. The intermediary presented as evidence of the group’s eligibility the Group, Corporation or Association Representation Retainer, which contained a declaration by the group that it satisfied this requirement. As discussed *supra* in Finding 2, an applicant group cannot, itself, make this determination. TRLS managed files evidenced three (3) additional exceptions in the files of one (1) client with three (3) cases. *See* open PAI Case Nos. 11-0250962, 11-0254390, and 11-0254391. All three (3) files indicated that the client’s income exceeded TRLS’ annual income ceiling, but lacked information concerning the specific facts and factors relied upon in determining the client’s financial eligibility. The legal assistance provided in these files may not be supported with LSC funds and the cases are not CSR reportable.

JALA managed files evidenced non-compliance with income eligibility requirements. One (1) exception was noted where a client’s recorded income was above 125% of the FPG, but no authorized exceptions were recorded in the file, as required by 45 CFR § 1611.5. *See* open JALA Case No. 11-0305688. Two (2) exceptions noted related to group cases where it was clear from the information contained in the files that neither group would be eligible for LSC-funded legal assistance. *See* closed 2011 JALA Case Nos. 10-0297668 and 11-0310199. One (1) group represented was a homeowners’ association seeking a return of fees paid and the other group represented pertained to a contract dispute related to the creation and maintenance of an artificial

reef. Neither file contained evidence that the group was “primarily composed of” individuals who would be eligible for LSC-funded service or that the group’s “principal activity” was the delivery of services to individuals who would be eligible for LSC-funded services and that it lacked the means to retain private counsel, as required by 45 CFR §§ 1611.6(a), (a)(1), and (a)(2). Furthermore, as is discussed *infra* in Finding 8, closed 2011 JALA Case No. 11-0310199 was also found to be outside of program priorities, in contradiction with 45 CFR Part 1620.

Although JALA managed files evidenced non-compliance with the requirements of 45 CFR § 1611.5, TRLS has already taken appropriate action to correct the problem as it did not renew JALA’s PAI subgrant in 2012. In consideration of this action by TRLS, no further remedial action is necessary.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 4: TRLS managed files evidenced substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. Two (2) JALA managed files reviewed did not comply with these requirements.**

As part of its financial eligibility policies, recipients are required to establish reasonable asset ceilings in order to determine an applicant’s eligibility to receive legal assistance. *See* 45 CFR § 1611.3(d)(1). For each case reported to LSC, recipients must document the total value of assets except for categories of assets excluded from consideration pursuant to its Board-adopted asset eligibility policies.<sup>5</sup> *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

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

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

TRLS managed files evidenced substantial compliance with the asset eligibility documentation required by 45 CFR §§ 1611.3(c) and (d) and CSR Handbook (2008 Ed., as amended 2011), § 5.4. Five (5) TRLS managed group client files lacked evidence of financial eligibility, as

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<sup>5</sup> A numerical total value must be recorded, even if it is zero or below the recipient’s guidelines. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.4.

discussed *supra* in Finding 2. *See* closed 2009 Case Nos. 08-0236678 and 09-0238932, closed 2011 PAI Case No. 10-0249289, and open PAI Case Nos. 10-0245852 and 11-0250867. Two (2) JALA managed group client files lacked evidence of financial eligibility, as discussed *supra* in Finding 2. *See* closed 2011 JALA Case Nos. 10-0297668 and 11-0310199.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 5: TRLS managed files evidenced substantial compliance with 45 CFR Part 1626 (Restrictions on legal assistance to aliens). JALA managed files evidenced non-compliance with this Part.**

The level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the services provided. With the exception of brief advice or consultation by telephone, which does not involve continuous representation, LSC regulations require that all applicants for legal assistance who claim to be citizens execute a written attestation. *See* 45 CFR § 1626.6. Aliens seeking representation are required to submit documentation verifying their eligibility. *See* 45 CFR § 1626.7. In those instances involving brief advice and consultation by telephone, which does not involve continuous representation, LSC has instructed recipients that the documentation of citizenship/alien eligibility must include a written notation or computer entry that reflects the applicant's oral response to the recipient's inquiry regarding citizenship/alien eligibility. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5; *See also*, LSC Program Letter 99-3 (July 14, 1999). In the absence of the foregoing documentation, assistance rendered may not be reported to LSC. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.5.

Prior to 2006, recipients were permitted to provide non-LSC funded legal assistance to an alien who had been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household, or an alien whose child had been battered or subjected to such cruelty.<sup>6</sup> Although non-LSC funded legal assistance was permitted, such cases could not be included in the recipient's CSR data submission. In January 2006, the Kennedy Amendment was expanded and LSC issued Program Letter 06-2, "Violence Against Women Act 2006 Amendment" (February 21, 2006), which instructs recipients that they may use LSC funds to provide legal assistance to ineligible aliens, or their children, who have been battered, subjected to extreme cruelty, is the victims of sexual assault or trafficking, or who qualify for a "U" visa. LSC recipients are now allowed to include these cases in their CSRs.

With one (1) exception, TRLS managed files evidenced substantial compliance with 45 CFR Part 1626. One (1) TRLS managed file reviewed lacked citizenship/alien eligibility documentation. *See* closed Case No. 11-0254036. JALA managed files evidenced non-compliance with this Part. Four (4) JALA managed files lacked evidence citizenship or alien eligibility screening. *See* closed 2011 JALA Case Nos. 08-0262754 and 11-0307137 and open JALA Case Nos. 11-0305278 and 11-0305011. Absent the requisite citizenship/alien eligibility documentation, these files should not have been included in TRLS' CSR data submission.

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<sup>6</sup> *See* Kennedy Amendment at 45 CFR § 1626.4.

Although JALA managed files evidenced non-compliance with the requirements of 45 CFR Part 1626, TRLS has already taken appropriate action to correct the problem as it did not renew JALA's PAI subgrant in 2012. In consideration of this action by TRLS, no further remedial action is necessary.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 6: Sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9 (Retainer agreements).**

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

The retainer agreement is to be executed when representation commences or as soon thereafter is practical and a copy is to be retained by the recipient. *See* 45 CFR §§ 1611.9(a) and (c). The lack of a retainer does not preclude CSR reporting eligibility.<sup>7</sup> Cases without a retainer, if otherwise eligible and properly documented, should be reported to LSC.

With one (1) exception, sampled cases evidenced substantial compliance with the retainer requirements of 45 CFR § 1611.9. One (1) file reviewed contained a retainer that failed to identify the legal problem for which representation was sought. *See* open Case No. 10-0244939.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

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

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

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

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<sup>7</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.

Sampled cases evidenced compliance with the requirements of 45 CFR Part 1636.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 8: TRLS managed files evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c) (Priorities in use of resources). One (1) JALA managed file reviewed did not comply with these requirements.**

LSC regulations require that recipients adopt a written statement of priorities that determines the cases which may be undertaken by the recipient, regardless of the funding source. *See* 45 CFR § 1620.3(a). Except in an emergency, recipients may not undertake cases outside its priorities. *See* 45 CFR § 1620.6.

Prior to the visit, TRLS provided OCE with a “Statement of Priorities.” According to this document, TRLS’ priorities are family, income maintenance, housing, medical, elderly and disabled, consumer, education, community legal education, and community economic development. All of the TRLS managed files that were reviewed during the visit were within TRLS’ priorities and therefore evidenced compliance with the requirements of 45 CFR § 1620.4 and § 1620.6(c).

One (1) JALA managed file reviewed was outside of program priorities as it pertained to a contract dispute related to the creation and maintenance of an artificial reef. *See* closed 2011 JALA Case No. 11-0310199. This file should not have been included in TRLS’ CSR data submission.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 9: Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6 (Description of legal assistance provided).**

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

If the applicant’s legal problem is outside the recipient’s priorities, or if the recipient has not provided any type of legal assistance, it should not report the activity in its CSR. For example, recipients may not report the mere referral of an eligible client as a case when the referral is the only form of assistance that the applicant receives from the recipient. *See* CSR Handbook (2008 Ed., as amended 2011), § 7.2.

Recipients are instructed to record client *and* case information, either through notations on an intake sheet or other hard-copy document in a case file, or through electronic entries in an ACMS database, or through other appropriate means. For each case reported to LSC such information shall, at a minimum, describe, *inter alia*, the level of service provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 5.6.

Sampled cases evidenced compliance with CSR Handbook (2008 Ed., as amended 2011), § 5.6.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 10: TRLS’ application of the CSR case closure categories is substantially consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011).**

The CSR Handbook defines the categories of case service and provides guidance to recipients on the use of the closing codes in particular situations. Recipients are instructed to report each case according to the type of case service that best reflects the level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.1.

With two (2) exceptions, sampled cases evidenced that TRLS’ application of the CSR case closure categories is generally consistent with Chapters VIII and IX, CSR Handbook (2008 Ed., as amended 2011). One (1) file reviewed was closed with case closure category “A” (Counsel and Advice), but the level of assistance evidenced in the file was more consistent with “L” (Extensive Service). *See* closed 2011 Case No. 08-0236579. One (1) file reviewed was closed with case closure category “B” (Limited Action), but the level of assistance evidenced in the file was more consistent with “L” (Extensive Service). *See* closed 2011 Case No. 09-0239433.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 11: TRLS managed files evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. One (1) JALA managed file reviewed did not comply with this requirement.**

To the extent practicable, programs shall report cases as having been closed in the year in which assistance ceased, depending on case type. Cases in which the only assistance provided is counsel and advice or limited action (CSR Categories A and B), should be reported as having been closed in the grant year in which the case was opened. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a).<sup>8</sup> There is, however, an exception for limited service cases opened after September 30, and those cases containing a determination to hold the file open because further

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<sup>8</sup> The time limitation of the 2001 Handbook that a brief service case should be closed “as a result of an action taken at or within a few days or weeks of intake” has been eliminated. However, cases closed as limited action are subject to the time limitation on case closure found in CSR Handbook (2008 Ed., as amended 2011), § 3.3(a) this category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L (Extensive Service).

assistance is likely. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.3(a). All other cases (CSR Categories F through L, 2008 CSR Handbook) should be reported as having been closed in the grant year in which the recipient determines that further legal assistance is unnecessary, not possible or inadvisable, and a closing memorandum or other case-closing notation is prepared. *See* CSR Handbook (2008 Ed., as amended 2011), § 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).

TRLS managed files evidenced substantial compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.3 regarding the timely closing of cases. One (1) TRLS managed PAI file reviewed was found to be untimely closed as the last legal activity noted in the file occurred on 1/13/09, but the case was not closed until 4/11/11. *See* closed 2011 PAI Case No. 08-0233240. This file did, however, contain evidence of unsuccessful attempts by TRLS to contact the PAI attorney handling the case but, when contact was finally made, the PAI attorney indicated that she had lost contact with client two (2) years prior. The intermediary indicated that this file has been identified for deselection by TRLS. Three (3) additional TRLS managed files reviewed were untimely closed. *See* closed 2010 Case No. 09-0240018 and closed 2011 Case Nos. 10-0247999 and 08-0237469. One (1) JALA managed file reviewed was found to be untimely closed as the last activity noted in the file occurred on 11/26/08, but the case was not closed until 12/31/11. *See* closed 2011 JALA Case No. 08-0262754. Files that are found to be untimely closed or dormant should be excluded from TRLS' CSR data submission.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 12: Sample cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.**

Through the use of automated case management systems and procedures, recipients are required to ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once. *See* CSR Handbook (2008 Ed., as amended 2011), § 3.2.

When a recipient provides more than one (1) type of assistance to the same client during the same reporting period, in an effort to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient may report only the highest level of legal assistance provided. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.2.

When a recipient provides assistance more than once within the same reporting period to the same client who has returned with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem, the recipient is instructed to report the repeated instances of assistance as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.3. Recipients are further instructed that related legal problems presented by the same client are to be reported as a single case. *See* CSR Handbook (2008 Ed., as amended 2011), § 6.4.

Sampled cases evidenced compliance with the requirements of CSR Handbook (2008 Ed., as amended 2011), § 3.2 regarding duplicate cases.



In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 13: Discussions with TRLS staff did not reveal any violations of the requirements of 45 CFR Part 1604 (Outside practice of law).**

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

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1604. OCE reviewed the policy and determined that it is consistent with Part 1604. Discussions with the Executive Director also confirmed that TRLS is not involved in any unauthorized outside practice of law. Based on the review of the recipient's policies, the list of attorneys who have engaged in the outside practice of law, and interviews with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1604.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 14: Sampled cases and materials reviewed evidenced compliance with the requirements of 45 CFR Part 1608 (Prohibited political activities).**

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

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1608. OCE reviewed the policy and determined that it is consistent with Part 1608. *See* TRLS Personnel and Program Policies, Chapter VII – Program Policies, ¶ C – Prohibited Political Activities (Amended 5/6/10). The limited review of accounting records and documentation for the period of January 2010 through December 2011, and fiscal interviews with management and staff disclosed that TRLS does not appear to have expended any grant funds or used personnel or equipment in prohibited activities in violation of 45 CFR § 1608.3(b). Additionally, a review of hard-copy informational materials and publications which TRLS makes available to applicants and clients which are published by TRLS and other federal, state, and private organizations, as well as a review of TRLS' website, did not evidence any content prohibited by 45 CFR §§ 1608.4, 1608.5, and 1608.6. Discussions with the Executive Director further confirmed that TRLS is not involved in any prohibited political activities. Based on the review of the recipient's policies, accounting records, hard-copy informational materials, TRLS' website, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1608.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

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

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

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

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

In light of recent regulatory changes, LSC has prescribed certain specific requirements for fee-generating cases. *See* Program Letters 09-3 (December 17, 2009) and 10-1 (February 18, 2010). LSC has determined that it will not take enforcement action against any recipient that filed a claim for, or collected or retained attorneys' fees during the period of December 16, 2009 through March 15, 2010. Enforcement activities related to claims for attorneys' fees filed prior to December 16, 2009, or fees collected or retained prior to December 16, 2009, are no longer suspended and any violations which are found to have occurred prior to December 16, 2009 will subject the grantee to compliance and enforcement action. Additionally, the regulatory provisions regarding accounting for and use of attorneys' fees and acceptance of reimbursement from clients remain in force, and violations of those requirements, regardless of when they have occurred, will subject the grantee to compliance and enforcement action.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1609. OCE reviewed the policy and determined that it is consistent with Part 1609. None of the sampled files reviewed involved legal assistance with respect to a fee-generating case. Discussions with the Executive Director also confirmed that TRLS is not involved in any fee-generating cases. Based on the review of case files and the recipient's policies, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1609.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 16: A review of TRLS' accounting and financial records evidenced substantial compliance with 45 CFR Part 1610 (Use of non-LSC funds, transfer of LSC funds, program integrity). Some TRLS donor notification letters reviewed were found to be inconsistent with the requirements of 45 CFR § 1610.5(a).**

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

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

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

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

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

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

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

engages in restricted activities. *See* OPO Memo to All LSC Program Directors, Board Chairs (October 30, 1997).

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

Based on a limited review of the chart of accounts and detailed General Ledger (“G/L”) for specific G/L accounts for January 2010 through December 2011, observations of the physical locations of all offices by the LSC fiscal analyst and team members, and interviews with staff, TRLS does not appear to be engaged in any restricted activity which would present a 45 CFR Part 1610 compliance issue. TRLS does not have contracts with other organizations to provide personnel, accounting, information technology, or other support services that would require compliance with 45 CFR Part 1610.

A review of donor notification letters evidenced that some letters in circulation are not consistent with the requirements of 45 CFR § 1610.5, which requires that recipients provide donors with notification of the prohibitions and conditions which apply to the funds. Upon request, TRLS generated a list of all contributions of at least \$250.00 or greater for the years 2009, 2010, and 2011. To satisfy the requirements of 45 CFR § 1610.5(a), TRLS sent out letters to individuals or groups donating \$250.00 or more. Eleven (11) sample donor notification letters used by TRLS were provided to the LSC fiscal review team while on-site. A review of these letters evidenced that TRLS has in use three (3) different donor notification letters; most variations being generic and lacking the specific language outlining the conditions and prohibitions that govern these funds. Specifically, the inadequate donor notification letters did not indicate that the funds may not be used in any manner inconsistent with the Legal Services Corporation Act or § 504 of Public Law 104-134. While on-site, the fiscal review team provided TRLS a sample compliant donor notification letter in order to assist the program in redrafting its donor notification letters in order to be fully compliant with 45 CFR § 1610.5(a). TRLS must ensure that its donor notification letters comply with the requirements of 45 CFR § 1610.5(a), and should consider using only one (1) donor notification letter template in order to avoid future confusion.

Discussions with the Executive Director confirmed that the program is not involved in any restricted activities and that its use of non-LSC funds, transfer of LSC funds, and its program integrity are not inconsistent with this regulation. Based on the limited review of the chart of accounts, G/L, and donor letters, along with interviews with staff and discussions with the Executive Director, TRLS appears to be in substantial compliance with the requirements of 45 CFR Part 1610.

In response to the DR and this finding, TRLS indicated that a uniform donor notification letter is being used and provided a copy of the letter. OCE reviewed the sample provided and found it to be fully compliant with 45 CFR § 1610.5(a).

**Finding 17: TRLS is in substantial compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of TRLS managed PAI case files were in substantial compliance with 45 CFR § 1614.3(d)(3). With regard to JALA managed PAI cases, TRLS conducted continuous oversight which was ultimately ineffectual and the subgrant was therefore not renewed. TRLS' 2012 PAI Plan is inconsistent with the requirements of 45 CFR § 1614.4(b) which requires that recipients develop an annual PAI plan through community consultation and document its presentation of the plan to all local bar associations. TRLS is in substantial compliance with 45 CFR § 1614.3(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities, and that non-personnel costs are allocated on the basis of reasonable operating data.**

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

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

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

### **TRLS PAI Model Assessment**

TRLS' PAI effort is managed by a Pro Bono Director, and each branch office has a Pro Bono Coordinator. The Pro Bono Director is currently acting as the Pro Bono Coordinator for the Lake City and Jacksonville Offices, but TRLS reportedly intends to appoint or hire separate Coordinators for those offices. TRLS' PAI practice is a pro bono model and is coordinated mainly out of the Lake City Office, although this is in transition. As discussed *supra*, TRLS' Jacksonville Office maintained a subgrant with JALA to carry out its PAI practice through 2011.

TRLS maintained its subgrant with JALA for six (6) years and reportedly chose not to renew the subgrant in 2012 due to compliance deficiencies. The Pro Bono Director provided the review team with evidence of its continuous oversight and efforts to assist JALA in complying with LSC's regulatory requirements, however those efforts were ultimately ineffectual and the subgrant was not renewed. The Jacksonville Office's PAI practice is being reincorporated into TRLS' staff-coordinated PAI effort.

Intake for PAI cases is conducted through TRLS' LHL. In most instances, after an accepted client is provided Limited Services by an LHL Staff Attorney, the LHL Staff Attorney, under the supervision of the LHL Managing Attorney, will refer cases with specific legal issues to the appropriate Pro Bono Coordinator for possible placement with a PAI attorney. *See Case Processing Guidelines, Stage 2 (October 1, 2011)*. TRLS' Family Law Division, however, determines which cases are appropriate for PAI placement and forwards those cases to the Pro Bono Coordinator. TRLS refers a variety of cases to its PAI attorneys, with family law and estate planning being common referrals.

Potential PAI referrals are sent a referral packet which includes an introductory letter explaining the PAI referral process, instructions to call the assigned PAI attorney, a printed copy of their Application for Services, and a Retainer Agreement. The Application for Services includes a citizenship attestation signature line and the introductory letter explains that U.S. Citizens must sign the citizenship attestation and that eligible aliens must provide a copy of their Alien Registration Card for placement to occur. PAI attorneys receiving referrals are sent an introductory letter, with enclosures including the referred client's printed Application for Services, a Case Acceptance Form, and an Agreement for Attorney Services.

Pro Bono Coordinators typically contact PAI attorneys within a month of a referral if a Case Acceptance Form, which is included in the initial referral documents sent to PAI attorneys, has not been returned. A tickler system is used as a reminder to make contact. Pro Bono Coordinators send periodic emails and letters to PAI attorneys and check referred cases with court dockets through the local online case view system. Pro Bono Coordinators also send year-end letters asking for updates from PAI attorneys. Pro Bono Coordinators report success in receiving updates from PAI attorneys as they state that it is unlikely that they will continue to use an unresponsive PAI attorney.

Pro Bono Coordinators utilize Case Update/Closing Forms to obtain information on case closure from PAI attorneys. PAI attorneys are asked to provide copies of any court documents or evidence of case disposition, as appropriate, at the conclusion of a case. During case closure, a Pro Bono Coordinator enters the applicable PAI attorney's time in the ACMS, assigns an appropriate case closure category to the case, and closes the file electronically.

TRLS managed PAI files reviewed did not identify any major areas of concern regarding oversight and follow-up of PAI files. *See discussed supra* in Finding 1, one (1) PAI case which may have been improperly coded or closed too early; in Findings 3 and 4, three (3) group PAI cases lacking all evidence necessary to prove financial eligibility; in Finding 3, one (1) PAI client with three (3) files whose income exceeded TRLS' annual income ceiling; and in Finding 11, one (1) PAI file which had been untimely closed.

- Clinics with PAI Attorney Participation

Participation of PAI attorneys in TRLS Clinics is discussed *supra* in Finding 2, with no compliance issues identified.

- JALA Oversight and Compliance

While on-site, the review team was provided with memorandums pertaining to PAI Subgrant Quarterly Reviews conducted by TRLS' Pro Bono Director of JALA managed cases. Memos pertaining to the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010 and the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2011 were provided. Each memorandum described the selected sample of cases reviewed, noted the compliance errors identified in the case review, and indicated that the errors had been communicated to JALA's Public Service Project Director. Cases reviewed were selected from the list of closed files reported to TRLS by JALA for the relevant quarter. It is apparent that JALA's non-compliance with LSC regulations was a recurring problem and its increase in magnitude was evidenced in the final two (2) Quarterly Reviews (1<sup>st</sup> and 2<sup>nd</sup> Quarter Reviews for 2011) provided to the review team. The PAI Subgrant 1<sup>st</sup> Quarter Review Memorandum, dated July 13, 2011, reported that 65% of the files reviewed contained noted compliance errors. The PAI Subgrant 2<sup>nd</sup> Quarter Review Memorandum, dated September 6, 2011, indicated that 79% of the files reviewed contained noted compliance errors.

Based on the increased and continuous nature of JALA's non-compliance with LSC regulations, and that identifying and communicating the compliance issues to JALA did not alleviate the problem, TRLS indicated that it made the decision not to renew JALA's PAI subgrant. Case review conducted by the review team highlighted these deficiencies and many of the findings contained in this report resulted from JALA managed files.

### 2012 PAI Plan

TRLS' 2012 PAI Plan is not consistent with the requirements of 45 CFR § 1614.4(b) which requires that recipients develop an annual PAI plan through community consultation and document its presentation of the plan to all local bar associations. TRLS' 2012 PAI Plan, provided to the review team while on-site, did not contain evidence that it had been "presented to all local bar associations within the recipient's service area." *See* 45 CFR § 1614.4(b).

### Allocation of PAI Costs

TRLS met its 12.5% PAI requirement in 2010, in part with the \$75,000.00 subgrant agreement it maintained with JALA. In 2010, TRLS utilized funds in the amount of \$293,108.00 from LSC, \$52,623.00 from the Florida Bar Association, and \$45,530 from other sources in order to meet its 12.5% PAI requirement

The Audited Financial Statement ("AFS") for Fiscal Year Ending December 31, 2010, did report separate expenditures dedicated to the PAI effort, as required by 45 CFR § 1614.4(e)(2). The AFS reported a total of \$391,261.00 in PAI expenditures, which translates to 17.7% of the total Basic Field Grant (\$2,214,016.00), complying with TRLS' 12.5% requirement. A review of

TRLS' spread sheet, PAI cost allocations, detailed PAI costs of all funders, the 2010 AFS, and TRLS' PAI staff salary allocations for the calendar year ending December 31, 2010, evidenced that TRLS correctly allocated the salaries of attorneys and paralegals with regard to total workable hours and was supported by time records. Nineteen (19) personnel time records with time charged to PAI in 2010 were reviewed. The review disclosed that several staff member's time, totaling \$3,300.07, was incorrectly charged as PAI time. The Administrator was informed of this error while the review team was on-site and immediately took remedial action. The Administrator also reported taking additional remedial steps in order to avoid any future occurrences. TRLS must revisit the remedial actions taken by the Administrator in order to ensure that the actions are sufficient to prevent staff members' time from being inappropriately charged as PAI time in the future.

The review revealed that non-personnel costs are being allocated on the basis of reasonable operating data, in compliance with the requirements of 45 CFR § 1614.3(e)(1)(i). Several direct costs allocated to PAI were reviewed and found to be related to PAI activities, and fully documented and approved. A review of several payments disclosed that the supporting documentation was not stamped as "paid" as required by LSC's Accounting Guide for LSC Recipients, Chapter 3-5.4 – Cash Disbursements, which states that documents should be marked as paid or otherwise canceled to avoid duplicate payment. In compliance with the requirements of the Accounting Guide for LSC Recipients, TRLS must ensure that it marks as "paid," or otherwise canceled, all supporting documents in order to avoid duplicate payment.

### **PAI Compliance Overview**

TRLS is in substantial compliance with 45 CFR Part 1614 which is designed to ensure that recipients of LSC funds involve private attorneys in the delivery of legal assistance to eligible clients. Oversight and follow-up of TRLS managed PAI case files were in substantial compliance with 45 CFR § 1614.3(d)(3). TRLS' 2012 PAI Plan is not consistent with the requirements of 45 CFR § 1614.4(b), as the plan did not contain evidence that it had been "presented to all local bar associations within the recipient's service area." TRLS is in substantial compliance with 45 CFR § 1614.3(e)(1)(i) which is designed to ensure that recipients of LSC funds correctly allocate administrative, overhead, staff, and support costs related to PAI activities, and that non-personnel costs are allocated on the basis of reasonable operating data. TRLS must ensure that it marks as "paid," or otherwise canceled, all supporting documents in order to avoid duplicate payment, as required by LSC's Accounting Guide for LSC Recipients.

Although JALA managed files evidenced ineffectual oversight and follow-up by TRLS, which is inconsistent with the requirements of 45 CFR § 1614.3(d)(3), TRLS has already taken appropriate action to correct the problem as it did not renew JALA's PAI subgrant in 2012. In consideration of this action by TRLS, no further remedial action is necessary.

In response to the DR and this finding, TRLS confirmed that it made necessary adjustments during OCE's visit to correct errors found in its PAI cost allocations and also indicated that all necessary reviews and revisions have taken place to assure that PAI time is correctly charged in the future. TRLS stated that accounting personnel have reviewed all installed distribution codes used in its accounting software in order to properly identify the allocation of PAI time and have



determined that none of the utilized codes are allocating expenses as PAI activity unless they are identified as PAI activity. TRLS further indicated that all supporting documents are being marked as “paid,” as a new receptionist has been hired in its Gainesville office who is responsible for mailing and distributing signed checks and marking all paid invoices as “paid.” TRLS stated in its response that this duty was always part of the receptionist’s responsibilities; however, the previously employed receptionist was not properly performing her duties. TRLS indicated that the new receptionist has been trained and is currently fulfilling this responsibility. Finally, TRLS indicated that its PAI plan was sent to all local bar associations on May 21, 2012, and is now in compliance with 45 CFR § 1611.4(b).

**Finding 18: TRLS is in substantial compliance with 45 CFR § 1627.4(a) which prohibits programs from utilizing LSC funds to pay membership fees or dues to any private or nonprofit organization.**

LSC has developed rules governing the transfer of LSC funds by recipients to other organizations. *See* 45 CFR § 1627.1. These rules govern subgrants, which are defined as any transfer of LSC funds from a recipient to an entity under a grant, contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.<sup>9</sup> Except that the definition does not include transfers related to contracts for services rendered directly to the recipient, *e.g.*, accounting services, general counsel, management consultants, computer services, etc., or contracts with private attorneys and law firms involving \$25,000 or less for the direct provision of legal assistance to eligible clients. *See* 45 CFR §§ 1627.2(b)(1) and (b)(2); *see also*, 48 Federal Register 28485 (June 2, 1983) and 48 Federal Register 54207 (November 30, 1983).

Additionally, 45 CFR § 1627.4(a) states that:

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

A limited review of accounting records and detailed G/L for the years 2009, 2010, and 2011 disclosed that a total of \$725.44 was charged as an LSC cost in error in 2011 and in contradiction with 45 CFR § 1627.4(a), which requires that all non-mandatory dues and fees be paid with non-LSC funds. The Administrator was informed of this error while the review team was on-site and immediately took remedial action by making corresponding adjustments so that the costs would

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<sup>9</sup> Programmatic activities includes those that might otherwise be expected to be conducted directly by the recipient, such as representation of eligible clients, or which provides direct support to a recipient’s legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or *judicare* basis, except that any such arrangement involving more than \$25,000.00 is included.

be paid with non-LSC funds. The Administrator also reported taking additional remedial steps in order to avoid any future occurrences. TRLS must revisit the remedial actions taken by the Administrator in order to ensure that the actions are sufficient to prevent all non-mandatory dues and fees from being paid for with LSC funds, as required by 45 CFR § 1627.4(a).

In response to the DR and this finding, TRLS confirmed that it made necessary adjustments during OCE's visit to correct errors found concerning 45 CFR § 1627.4(a), and also indicated that prior to the year's end the Executive Director, or his/her designee, will review the detail of transactions to General Ledger accounts for Memberships and Dues and Bar Dues in order to make certain that non-mandatory dues and fees are not paid for with LSC funds.

**Finding 19: TRLS is in compliance with 45 CFR Part 1635 (Timekeeping requirement).**

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

Specifically, 45 CFR § 1635.3(a) requires that all expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must satisfy the requirements of 45 CFR Part 1630. Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity. Time records must be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid by the recipient. Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent. The timekeeping system must be able to aggregate time record information on both closed and pending cases by legal problem type. Recipients shall require any attorney or paralegal who works part-time for the recipient and part-time for an organization that engages in restricted activities to certify in writing that the attorney or paralegal has not engaged in restricted activity during any time for which the attorney or paralegal was compensated by the recipient or has not used recipient resources for restricted activities.

A review of five (5) TRLS advocates' timekeeping records for the pay periods ending on March 25, 2011, and September 9, 2011, disclosed that the records are electronically and contemporaneously kept. The time spent on each case, matter, or supporting activity is recorded in compliance with 45 CFR §§ 1635.3(b) and (c). TRLS does not have on file the corresponding Quarterly Certification for Part-time Case Handlers, since such part-time case handlers do not work for organizations that engage in restricted activities in compliance with 45 CFR § 1635.3(d). TRLS currently employs three (3) part-time case handlers, including two (2) part-

time attorneys and one (1) part-time paralegal. Based on the limited review of the program's timekeeping records, TRLS appears to be in compliance with 45 CFR Part 1635.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 20: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1642 (Attorneys' fees).**

Prior to December 16, 2009, except as otherwise provided by LSC regulations, recipients could not claim, or correct and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. *See* 45 CFR § 1642.3.<sup>10</sup> However, with the enactment of LSC's FY 2010 consolidated appropriation, the statutory restriction on claiming, collecting or retaining attorneys' fees was lifted. Therefore, at its January 30, 2010, meeting, the LSC Board of Directors took action to repeal the regulatory restriction on claiming, collecting or retaining attorneys' fees. Accordingly, effective March 15, 2010, recipients may claim, collect, and retain attorneys' fees for work performed, regardless of when such work was performed.

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

A limited review of TRLS' fiscal records, the 2010 AFS, Trial Balances for 2009, 2010, and 2011, and interviews with the Administrator and the Executive Director evidenced that there were no attorneys' fees awarded, collected, or retained for cases serviced directly by TRLS that would violate 45 CFR Part 1642. Based on case files reviewed, discussions with the Executive Director, and the review conducted by LSC's fiscal analysts, TRLS appears to be in compliance with the requirements of 45 CFR Part 1642.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 21: Sampled cases reviewed and documents reviewed evidenced compliance with the requirements of 45 CFR Part 1612 (Restrictions on lobbying and certain other activities).**

The purpose of 45 CFR Part 1612 is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other

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<sup>10</sup> The regulations defined "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the award of such fees or a payment to an attorney from a client's retroactive statutory benefits. *See* 45 CFR § 1642.2(a).

direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1612. OCE reviewed the policy and determined that it is consistent with Part 1612. None of the sampled fiscal files or documents reviewed evidenced any lobbying or other prohibited activities. Additionally, as discussed in Finding 14 with regard to Part 1608, a review of hard-copy informational materials and publications which TRLS makes available to applicants and clients which are published by TRLS and other federal, state, and private organizations, as well as a review of TRLS' website, did not evidence any content prohibited by 45 CFR §§ 1612.4, 1612.8, and 1612.9. Discussions with the Executive Director also confirmed that TRLS is not involved in any prohibited public rulemaking or lobbying activities. Based on the policies reviewed, discussions with the Executive Director, and the fiscal review, TRLS appears to be in compliance with the requirements of 45 CFR Part 1612.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 22: Sampled cases evidenced compliance with the requirements of 45 CFR Parts 1613 and 1615 (Restrictions on legal assistance with respect to criminal proceedings, and actions collaterally attacking criminal convictions).**

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

None of the sampled files reviewed involved legal assistance with respect to a criminal proceeding, or a collateral attack in a criminal conviction. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the case files reviewed and discussions with the Executive Director, TRLS appears to be in compliance with 45 CFR Parts 1613 and 1615.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

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

Recipients are prohibited from initiating or participating in any class action. *See* 45 CFR § 1617.3. The regulations define "class action" as a lawsuit filed as, or otherwise declared by a court of competent jurisdiction, as a class action pursuant Federal Rules of Civil Procedure, Rule 23, or comparable state statute or rule. *See* 45 CFR § 1617.2(a). The regulations also define

“initiating or participating in any class action” as any involvement, including acting as co-counsel, amicus curiae, or otherwise providing representation relative to the class action, at any stage of a class action prior to or after an order granting relief. *See* 45 CFR § 1617.2(b)(1).<sup>11</sup>

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1617. OCE reviewed the policy and determined that it is consistent with Part 1617. None of the sampled files reviewed involved initiation or participation in a class action. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the program’s policies, the case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1617.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 24: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1632 (Redistricting).**

Recipients may not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or representing any party, or participating in any other way in litigation, related to redistricting. *See* 45 CFR § 1632.3.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1632. OCE has reviewed the policy and has determined that it is consistent with Part 1632. None of the sampled files reviewed revealed participation in litigation related to redistricting. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the program’s policies, case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1632.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 25: 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 of other resident tenants, or employees of the public housing agency. *See* 45 CFR § 1633.3.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1633. OCE reviewed the policy and determined that it is consistent with Part 1633. None of the sampled

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<sup>11</sup> It does not, however, include representation of an individual seeking to withdraw or opt out of the class or obtain the benefit of relief ordered by the court, or non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate, or advise others about the terms of an order granting relief. *See* 45 CFR § 1617.2(b)(2).

files reviewed involved defense of any such eviction proceeding. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1633.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 26: 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.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1637. OCE reviewed the policy and determined that it is consistent with Part 1637. None of the sampled files reviewed involved participation in civil litigation, or administrative proceedings, on behalf of an incarcerated person. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1637.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 27: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1638 (Restriction on solicitation).**

In 1996, Congress passed, and the President signed, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the "1996 Appropriations Act"), Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). The 1996 Appropriations Act contained a new restriction which prohibited LSC recipients and their staff from engaging a client which it solicited.<sup>12</sup> This restriction has been contained in all subsequent appropriations acts. This restriction is a strict prohibition from being involved in a case in which the program actually solicited the client. As stated clearly and concisely in 45 CFR § 1638.1: "This part is designed to ensure that recipients and their employees do not solicit clients."

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1638. OCE reviewed the policy and determined that it is consistent with Part 1638. None of the sampled files reviewed, including documentation such as community education materials and program literature, indicated program involvement in such activity. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the

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<sup>12</sup> *See* Section 504(a)(18).

program's policies, case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1638.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 28: Sampled cases evidenced compliance with the requirements of 45 CFR Part 1643 (Restriction on assisted suicide, euthanasia, and mercy killing).**

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

TRLS has adopted a written policy to guide its staff in complying with 45 CFR Part 1643. OCE reviewed the policy and determined that it is consistent with Part 1643. None of the sampled files reviewed indicated program involvement in such activity. Discussions with the Executive Director also confirmed that TRLS is not involved in this prohibited activity. Based on the program's policies, case files reviewed, and discussions with the Executive Director, TRLS appears to be in compliance with the requirements of 45 CFR Part 1643.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 29: Sampled cases evidenced compliance with the requirements of certain other LSC statutory prohibitions (42 USC 2996f § 1007 (a) (8) (Abortion), 42 USC 2996f § 1007 (a) (9) (School desegregation litigation), and 42 USC 2996f § 1007 (a) (10) (Military selective service act or desertion)).**

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

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

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

All of the sampled files reviewed demonstrated compliance with the above LSC statutory prohibitions. Discussions with the Executive Director and other staff further evidenced and confirmed that TRLS was not engaged in any litigation which would be in violation of Section 1007(b) (8) of the LSC Act, Section 1007(b) (9) of the LSC Act, or Section 1007(b) (10) of the LSC Act. Based on the case files reviewed and discussions with the Executive Director and other staff, TRLS appears to be in compliance with the above LSC statutory prohibitions.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 30: TRLS evidenced compliance with the requirements of 45 CFR § 1620.6 (Signed written agreement).**

All staff who handle cases or matters, or are authorized to make decisions about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

- a) Has read and is familiar with the priorities of the recipient;
- b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and
- c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

TRLS has adopted a written policy to guide its staff in complying with 45 CFR § 1620.6. OCE reviewed the policy and determined that it is consistent with Section 1620.6. A review of the 45 CFR § 1620.6 required written agreements signed by five (5) randomly selected TRLS staff members who handle cases or matters, or who are authorized to make decisions about case acceptance, demonstrated that TRLS obtains these agreements from necessary personnel. Based on the policies and signed written agreements reviewed, TRLS appears to be in compliance with 45 CFR § 1620.6.

In response to the DR, TRLS offered no individualized comments with respect to this finding.

**Finding 31: A limited review of TRLS' internal control policies and procedures revealed weaknesses that are inconsistent with the elements outlined in Chapter 3 - Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.).**



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

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

#### *Bank Reconciliations Review*

The bank account reconciliations for the operating, client trust, and investments accounts for October, November, and December 2011, were reviewed and found to be performed timely and accurately. The bank statement balances reconciled with the G/L and reflected the corresponding approvals. The review disclosed, however, several outstanding checks over six (6) months old totaling \$400.78, which were issued between December 2008 through February 2011. Such old outstanding checks make it harder to review the bank reconciliations and these items should be resolved and removed from the outstanding check listings. TRLS should ensure that it: investigates all outstanding checks that are over six (6) months old; that it proceeds according to the findings; and that it follows its own policy which indicates that the Accountant "determines which checks were paid by the bank during the month and which checks remain outstanding, and investigates particularly old checks (over six months)." *See* TRLS Accounting Manual (Revised November 2011) – Bank Reconciliations and Accruals, ¶ 6 (Revised August 8, 2006). In addition, the review revealed that email bank statements are being reviewed by the Administrator who performs most of the accounting functions. Therefore, TRLS should also ensure that someone other than the Administrator is responsible for reviewing bank reconciliations. Such review should be appropriately documented by signature and date, as required by the Accounting Guide for LSC Recipients (2010 Ed.).

#### *Accounting Manual Review*

A cursory review of TRLS' Accounting Manual disclosed that it is adequately documented and generally meets the requirements of the Accounting Guide for LSC Recipients (2010 Ed.).

### Segregation of Duties and Internal Controls

A review of the internal controls worksheet, accounting processes, and interviews with the Executive Director and the Administrator disclosed that TRLS does not have adequate segregation of duties and internal controls. The review disclosed that the Administrator handles the functions of originating, reviewing, approving, and posting General Journal entries to the G/L; the Administrator is further responsible for procurement, payroll, receiving bank statement via email, reviewing Bank Reconciliations, and posting entries to the G/L; and, in addition, the Administrator is involved in personnel matters and is responsible for Office Automation. TRLS should ensure that it establishes an adequate internal control and segregation of duties structure as established in the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3 – Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System.

The review further disclosed that the Administrator makes General Journal entries without the entries being reviewed and approved by another staff member. TRLS should ensure that the duty of reviewing and approving the General Journal entries before posting them to the G/L is assigned to the Executive Director or another authorized person, as required by the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3-5.6 – General Journal.

### Company Credit Card Internal Controls

Randomly selected samples of 18 credit card charges incurred during the first four (4) months of 2010 were reviewed. All of the reviewed charges were properly documented, in that supporting documentation was attached to the credit card bill. These charges were not, however, coded to a funding source and, in order to determine the source of the funds from which the credit card charges had been paid, the Administrator had to run a separate report. In addition, the corresponding invoices were not stamped “paid.” As discussed *supra* in Finding 17, TRLS should ensure it marks as “paid,” or otherwise cancelled, all supporting documents in order to prevent duplicate payments, as required by the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3-5.4 – Cash Disbursements.

### Payroll Advance Procedures

TRLS’ Salary Advances policy contained in their Personnel and Program Policies manual indicates, in general terms, that salary advances can be given with the Executive Director’s authorization in situations where “unforeseeable emergencies” occur which place individuals in a situation of “temporary financial difficulty.” See TRLS Personnel and Program Policies (“personnel policy”), Chapter II – Compensation, ¶ B – Salary Advances. An “unforeseeable emergency” is defined by TRLS’ personnel policy as “severe financial hardship to the employee resulting from a sudden and unexpected illness or accident...” A review of salary advances for 2010 and 2011 trial balances disclosed that the occurrence of salary advances are minimal, and the review did not disclose any outstanding advances during the review period.

### *Fiscal Compliance Overview*

The limited review of TRLS' internal control policies and procedures revealed weaknesses that are inconsistent with the elements outlined in Chapter 3 – Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System of the Accounting Guide for LSC Recipients (2010 Ed.). Therefore, as required by the Accounting Guide for LSC Recipients (2010 Ed.), TRLS must ensure the following: that someone other than the Administrator is responsible for reviewing bank reconciliations and that the review is appropriately documented by signature and date; that it investigates all outstanding checks over six (6) months old and that it follows its own policy which indicates that the Accountant is responsible for investigating outstanding checks over six (6) months old; that it establishes an adequate internal control and segregation of duties structure; that the duty of reviewing and approving General Journal entries before posting them to the G/L is assigned to the Executive Director or another authorized person; and that it marks as “paid,” or otherwise cancelled, all supporting documents in order to prevent duplicate payments.

In response to the DR and this finding, TRLS indicated that it has complied with all requirements regarding segregation of duties and internal controls as required by the Accounting Guide for LSC Recipients. TRLS indicated that the Executive Director now reviews all Bank Reconciliations and General Journal entries. TRLS stated that its Accounting Manual was updated on May 10, 2012, with regard to Bank Statement Reconciliations and Journal entries, and provided copies of the updated policies with its response to the DR. OCE reviewed the policies and found that they are consistent with the requirements of the Accounting Guide for LSC Recipients (2010 Ed.). TRLS further indicated, as noted above, that all supporting documents are being marked as “paid,” as a new receptionist has been hired in its Gainesville office who is responsible for mailing and distributing signed checks and marking all paid invoices as “paid.” TRLS stated in its response that this duty was always part of the receptionist's responsibilities; however, the previously employed receptionist was not properly performing her duties. TRLS indicated that the new receptionist has been trained and is currently fulfilling this responsibility. Finally, TRLS indicated that all checks over six (6) months old are being investigated as is required by TRLS' Accounting Manual, which was revised in November 2011. TRLS stated that, since the time of OCE's visit, a number of checks issued to staff that were never cashed and cannot be located have been voided and reissued and other checks over six (6) months old have been voided per its current Accounting Manual.

#### IV. RECOMMENDATIONS<sup>13</sup>

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

1. Conduct a technical review of its ACMS as some of the ACMS inconsistencies found in TRLS managed cases during case review appeared to be a result of technological error. TRLS' should verify that its ACMS' capabilities can be relied upon for the effective management of cases and the accurate reporting of cases to LSC in the CSR;

In response to the DR, TRLS offered no individualized comments with respect to this recommendation.

2. Adjust its ACMS so that it no longer spends-down applicants' expenses in order to parallel its current financial eligibility screening practice and the written financial eligibility policy currently in development;

In response to the DR, TRLS offered no individualized comments with respect to this recommendation.

3. Amend its Group Client Application in order to maximize compliance with regard to group financial eligibility screening. Specifically, TRLS should expand the questionnaire so that it better collects information evidencing that the applicant group has no practical means of obtaining private counsel, in accordance with 45 CFR § 1611.6(a), and, when applicable, that the group is primarily composed of individuals who would be eligible for LSC-funded legal assistance, in accordance with § 1611.6(a)(1);

In response to the DR, TRLS offered no individualized comments with respect to this recommendation.

4. Consider revising its current financial eligibility screening requirements related to its vehicle asset exclusion as it is unnecessarily time consuming to Legal Helpline Intake Specialists and is not required by 45 CFR § 1611.3(d)(1), and it should consider allowing *all vehicles* used for transportation to be excluded from consideration as an asset, as permitted by § 1611.3(d)(1);

In response to the DR, TRLS offered no individualized comments with respect to this recommendation; however, TRLS submitted a copy of its new financial eligibility policy entitled "Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies for LSC Supported Legal Assistance" ("Policy"). OCE reviewed TRLS' new Policy and found that this

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<sup>13</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 program with topics addressed in the report. Often recommendations address potential issues and may assist a program to avoid future compliance errors.

By contrast, the items listed in "Required Corrective Actions" must be addressed by the program, and will be enforced by LSC.

Recommendation has been incorporated into the new Policy. The Policy allows all vehicles used for transportation to be excluded from consideration as an asset.

5. Eliminate the distinction between liquid and non-liquid assets in its financial eligibility policy, as LSC revised this former practice in 2005 in favor of language that focused more on the availability of assets. *See 70 Federal Register 45545, 45547 (August 8, 2005);*

In response to the DR, TRLS offered no individualized comments relating to this recommendation; however, TRLS submitted a copy of its new financial eligibility policy entitled “Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies for LSC Supported Legal Assistance” (“Policy”). OCE reviewed TRLS’ new Policy and found that this Recommendation has been incorporated into the new Policy. The Policy eliminates the distinction between liquid and non-liquid assets.

6. Consider defining “family unit” and “assets” in its financial eligibility policy; and

In response to the DR, TRLS offered no individualized comments relating to this recommendation; however, TRLS submitted a copy of its new financial eligibility policy entitled “Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies for LSC Supported Legal Assistance” (“Policy”). OCE reviewed TRLS’ new Policy and found that this Recommendation has been incorporated into the new Policy. The Policy includes definitions for “Income,” “Household,” “Resident Member,” “Total Cash Receipts,” and “Assets.”

7. Consider using only one (1) 45 CFR § 1610.5(a) compliant donor notification letter template in order to avoid future confusion.

In response to the DR, TRLS indicated that a uniform donor notification letter is being used and provided a copy of the letter. OCE reviewed the sample provided and found it to be fully compliant with 45 CFR § 1610.5(a).

## V. REQUIRED CORRECTIVE ACTIONS

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

1. With regard to financial eligibility screening:
  - a. Require Intake Specialists to inquire and record information related to income prospects, as required by 45 CFR § 1611.7(a)(1);
  - b. Revise the definition of total cash receipts in its financial eligibility policy to include up to \$2,000.00 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute, as required by 45 CFR. § 1611.2(h)(i);
  - c. Revise its financial eligibility policy to include a statement which indicates that only individuals determined to be financially eligible under TRLS' policy and LSC regulations may receive legal assistance supported with LSC funds, as required by 45 CFR § 1611.3(b);
  - d. Revise its financial eligibility policy to include a statement which indicates that the income and assets of an alleged perpetrator of domestic violence will not be considered during the victim's financial eligibility screening, as required by 45 CFR § 1611.3(e);
  - e. Adopt language in its financial eligibility policy in order to guide its practice with regard to a client's change in financial circumstance, as required by 45 CFR § 1611.8;
  - f. Ensure that, if it chooses to continue to allow the asset exclusion, its financial eligibility policy specifies that a vehicle excluded from consideration must be *used for transportation*, in accordance with 45 CFR § 1611.3(d)(1); and
  - g. Revise its financial eligibility policy to include the representation of groups, if it chooses to continue the practice, in accordance with 45 CFR § 1611.6, and to reflect screening and documentation requirements of group client eligibility.

In response to the DR and this Required Corrective Action, TRLS reported that action has been taken with regard to paragraphs a, b, c, d, e, f, and g. TRLS indicated that the requirements of each paragraph were accomplished by drafting a new policy entitled "Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies for LSC Supported Legal Assistance" ("Policy"). TRLS indicated that the Policy was approved by its Board of Directors on February 29, 2012, that the minutes from that meeting were approved at the following Board of Directors meeting on May 16, 2012, and that an email was sent to all TRLS staff on March 2, 2012, with a copy of the Policy attached and an explanation of the changes that were made. In response to the DR, TRLS also provided copies of its new Policy and a copy of the email sent to staff regarding

the new Policy. TRLS further indicated that each requirement has been incorporated into its case management manual as well as in its ACMS. OCE reviewed TRLS' new Policy and found that all Required Corrective Actions were sufficiently incorporated into its new Policy and that the Policy is now compliant with 45 CFR Part 1611.

2. Ensure that its 2012 PAI Plan is consistent with the requirements of 45 CFR § 1614.4(b), by containing evidence that it has been "presented to all local bar associations within the recipient's service area;"

In response to the DR and this Required Corrective Action, TRLS indicated that its PAI plan was sent to all local bar associations on May 21, 2012, and is now in compliance with 45 CFR § 1611.4(b).

3. With regard to segregation of duties and internal controls and as required by the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3 – Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System:
  - a. Establish an adequate internal control and segregation of duties structure;

In response to the DR and this Required Corrective Action, TRLS indicated that it has complied with all requirements regarding segregation of duties and internal controls as required by the Accounting Guide for LSC Recipients, and as indicated in its responses to Required Corrective Actions 3(b)-(e).

- b. Ensure that someone other than the Administrator is responsible for reviewing Bank Reconciliations and that the review is appropriately documented by signature and date;

In response to the DR and this Required Corrective Action, TRLS indicated that the Executive Director now reviews all Bank Reconciliations. TRLS stated that its Accounting Manual was updated on May 10, 2012, with regard to Bank Statement Reconciliations and provided a copy of the updated policy with its response to the DR. OCE reviewed the new Policy and found that it is consistent with the requirements of the Accounting Guide for LSC Recipients (2010 Ed.).

- c. Assign the duty of reviewing and approving the General Journal entries before they are posted to the General Ledger to the Executive Director or another authorized person, as required by the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3-5.6 – General Journal;

In response to the DR and this Corrective Action, TRLS indicated that the Executive Director now reviews General Journal entries. TRLS stated that its Accounting Manual was updated on May 10, 2012, with regard to Journal entries and provided a copy of the updated policy with its response to the DR. OCE reviewed the new Policy and found that it is consistent with the requirements of the Accounting Guide for LSC Recipients (2010 Ed.).

- d. Mark as “paid,” or otherwise canceled, all supporting documents in order to avoid duplicate payment, as required by the Accounting Guide for LSC Recipients (2010 Ed.), Chapter 3-5.4 – Cash Disbursement; and

In response to the DR and this Required Corrective Action, TRLS indicated that all supporting documents are being marked as “paid,” as a new receptionist has been hired in its Gainesville office who is responsible for mailing and distributing signed checks and marking all paid invoices as “paid.” TRLS stated in its response that this duty was always part of the receptionist’s responsibilities; however, the previously employed receptionist was not properly performing her duties. TRLS indicated that the new receptionist has been trained and is currently fulfilling this responsibility.

- e. Ensure that it investigates all outstanding checks that are over six (6) months old, that it proceeds according to the findings, and that it follows its own policy which indicates that the Accountant “determines which checks were paid by the bank during the month and which checks remain outstanding, and investigates particularly old checks (over six months).” *See* TRLS Accounting Manual (Revised November 2011) – Bank Reconciliations and Accruals, ¶ 6 (Policy Revised August 8, 2006).

In response to the DR and this Required Corrective Action, TRLS indicated that all checks over six (6) months old are investigated as is required by TRLS’ accounting manual, which was revised in November 2011. TRLS stated that, since the time of OCE’s visit, a number of checks issued to staff that were never cashed and cannot be located have been voided and reissued and other checks over six (6) months old have been voided per its current Accounting Manual.

4. Ensure that its donor notification letters comply with the requirements of 45 CFR § 1610.5(a);

In response to the DR and this Required Corrective Action, TRLS indicated that a uniform donor notification letter is being used and provided a copy of the letter with its response to the DR. OCE reviewed the sample provided and found it to be fully compliant with 45 CFR § 1610.5(a).

5. Review for sufficiency, and revise as necessary, the remedial actions taken by the Administrator while the review team was on-site to prevent all non-mandatory dues and fees from being paid for with LSC funds, as required by 45 CFR § 1627.4(a). OCE notes its on-site observation that TRLS made the necessary corresponding adjustments to costs totaling \$724.44 which were found by the review team to be charged to LSC in error; and

In response to the DR and this Required Corrective Action, TRLS confirmed that it made necessary adjustments during OCE’s visit to correct errors found concerning 45 CFR § 1627.4(a), and also indicated that prior to the year’s end the Executive Director, or his/her designee, will review the detail of transactions to General Ledger accounts for Memberships and Dues and Bar Dues in order to make certain that non-mandatory dues and fees are not paid for with LSC funds.



6. Review for sufficiency, and revise as necessary, the remedial actions taken by the Administrator while the review team was on-site to prevent staff members' time from being charged as PAI time in the future. OCE notes its on-site observation that TRLS made the necessary corresponding adjustments to time totaling \$3,300.07 which was found by the review team to be charged as PAI time in error.

In response to the DR and this Required Corrective Action, TRLS confirmed that it made necessary adjustments during OCE's visit to correct errors found in its PAI cost allocations and also indicated that all necessary reviews and revisions have taken place to assure that PAI time is correctly charged in the future. TRLS stated that accounting personnel have reviewed all installed distribution codes used in its accounting software in order to properly identify the allocation of PAI time and have determined that none of the utilized codes are allocating expenses as PAI activity unless they are identified as PAI activity.

## Lora Rath

---

**From:** Allison Thompson <allison.thompson@trls.org>  
**Sent:** Monday, May 21, 2012 7:32 PM  
**To:** Lora Rath  
**Subject:** Comments and Responses to OCE visits  
**Attachments:** response to LSC OCE visit.odt

Dear Ms. Rath:

Attached are comments and responses to all required corrective actions generated from the most on-site OCE visit. We appreciate all of the helpful comments and suggestions from the team.

--

Allison P Thompson  
Executive Director  
Three Rivers Legal Services, Inc.  
[allison.thompson@trls.org](mailto:allison.thompson@trls.org)  
352-372-0519

## COMMENTS AND RESPONSES TO REQUIRED CORRECTIVE ACTION

(1) With regard to financial eligibility screening:

All of the required corrective actions relating to financial eligibility have been taken and there is compliance in regard to a-g. The TRLS Board has approved all of these actions and they have been incorporated in our case management manual and on our case management system.

(2) We have sent our PAI plan to all bar associations as required by 45CRF 1614.4(b)

(3) TRLS has complied with all requirements regarding segregation of duties and internal controls as required by the Accounting Guide of LSC Recipients. The Executive Director now reviews all Bank Reconciliations and General Journal entries. All supporting documents are mark as "paid." All old checks (over six months) are investigated in keeping with our accounting manual revised November 2011.

(4) A uniform donor notification letter is being used.

(5) There will be a review of fiscal action to make certain that non-mandatory dues and fees are not being paid for with LSC funds. Necessary adjustments were made to correct errors during the visit.

(6) All necessary reviews and revisions have taken place to assure that PAI time is being correctly charged. On-site adjustments were made at the time of the visit.

## Lora Rath

---

**From:** Julia Kramer  
**Sent:** Monday, June 04, 2012 1:26 PM  
**To:** Lora Rath  
**Subject:** FW: responses and comments (additional)  
**Attachments:** Assets and Income Guidelines.pdf; Income and Asset Policy to staff.pdf; thank you; Bank statement reconciliation policies.pdf; TRLS Donor Notification Letter.DOCX

For your records - Eric helped me convert the "Thank You" (Donor Notification Letter) into a format that could be opened. I have attached it to this email.

**From:** Allison Thompson [<mailto:allison.thompson@trls.org>]  
**Sent:** Friday, May 25, 2012 3:57 PM  
**To:** Julia Kramer  
**Subject:** responses and comments (additional)

Thank you Julia for giving me an opportunity to provide more detailed answers, and I apologize for not being more specific. Please contact if you need more information or greater specificity in my answers.

Corrective Action 1 - A copy of the new policy with the date it was approved by the Board and, if any training (or an email sent out, etc.) was conducted, the date on which it occurred.

Attached is a copy of the new policy entitled Three Rivers Legal Services, Inc. Income and Asset Eligibility Policies For LSC Supported Legal Assistance. The policy was approved by our Board of Directors on February 29, 2012. The minutes from the February meeting were approved at the BoD meeting on May 16, 2012. Donna MacRae sent an email to all staff on March 2, 2012 with the new policy attached and explained the changes. Attached is a copy of the email.

Corrective Action 2 - The date the 2012 PAI plan was sent out to the local bar associations.

The 2012 PAI plan was sent to the local bar associations on May 21, 2012.

Corrective Action 3 (a) - Some specific details about the internal control and segregation of duties structure that was established.

With the changes made for 3(b)-(e) and the performance of already established duties, the organization believes that it has adequate internal control and segregation of duties appropriate for its size.

The Accounting Manual was updated in response to 3(b) and 3(c). Attached are the relevant pages from the Manual.

For 3(d), a new receptionist was hired in the Gainesville office who is responsible for mailing and distributing signed checks and marking all paid invoices as paid. This was always part of the receptionist job duties, however, the previous employee was not properly performing her duties. The new employee has been properly trained and is fulfilling this responsibility.

For 3(e), the accountant regularly follows up on outstanding checks. Since the visit, a number of "lost" checks have been voided and reissued. Other checks over 6 months old have been voided per the current Accounting Manual.

Corrective Action 4 - A copy of the donor notification letter.

See attached.

Corrective Actions 5 - Some specific details regarding what the "review" entails (If it is/was a one-time review to ensure that the policy was sufficient, then the date it was conducted; if it is a review that will be conducted periodically, then the frequency they will occur, etc.).

Prior to year's end the Executive Director or his/her designee will review the detail of transactions to General Ledger accounts 56500 (Memberships and Dues) and 56550 (Bar Dues) to ascertain that no non-mandatory dues have been charged to Legal Services Corporation.

Corrective Action 6 - Some specific details regarding the "reviews and revisions" that have taken place.

Accounting personnel have reviewed all installed distribution codes used in the accounting software to properly identify the allocation of PAI and time and have determined that no utilized codes not identified as PAI are allocating expenses to PAI as an activity.

--

Allison P Thompson  
Executive Director  
Three Rivers Legal Services, Inc.  
[allison.thompson@trls.org](mailto:allison.thompson@trls.org)  
[352-372-0519](tel:352-372-0519)

**THREE RIVERS LEGAL SERVICES, INC.**  
**INCOME AND ASSET ELIGIBILITY POLICIES**  
**FOR LSC SUPPORTED LEGAL ASSISTANCE**

**Purpose:** This policy specifies the basic standards and procedures for determining income and asset eligibility questions for individuals and groups seeking assistance from Three Rivers Legal Services, Inc. (TRLS). Only individuals and groups determined to be eligible under TRLS' Income and Asset Eligibility Policies and applicable LSC rules, regulations and instructions may receive legal assistance supported with Legal Services Corporation funds.

**Applicability:** This policy shall not be applied or interpreted to prevent TRLS from providing assistance to an individual whose income or assets exceed the LSC maximums noted in this policy, provided the assistance is wholly supported by funds from a non-LSC source and the individual is otherwise eligible under applicable laws, regulations and grant or contract requirements.

**Basic Record Keeping:** LSC supported client case files or records shall affirmatively demonstrate appropriate individual or group applicant income, financial and asset eligibility information was obtained and eligibility verified in accordance with the standards and procedures of this policy.

**Policy Development:** In establishing income and asset ceilings, TRLS has considered the cost of living in the locality; the number of clients who can be served by TRLS' resources; the potentially eligible population at various ceilings; and the availability of other sources of legal assistance.

**I. INDIVIDUAL FINANCIAL ELIGIBILITY**

**A. DEFINITIONS**

1. **Income:** the actual current annual total cash receipts before taxes of all persons who are resident members of and contribute to the support of the applicant's household. Income of the other resident members of the household unit shall be counted only to the extent such income constitutes a regular or recurring source of financial support that is currently and actually available to the applicant, and only to the extent of the actual contribution.
2. **Household:** all persons who are living in a residential household relationship with the applicant with the intention of continuing in that relationship and who share their common economic resources in such a way that they function with the applicant as one economic unit.
3. **Resident Member:** a person physically living in a household or the majority of whose support is provided by the applicant or the household or who contributes the majority of their support to the household themselves and the other members of the household.
4. **Total cash receipts:** includes, but is not limited to, wages and salaries before any deduction; income from net self-employment; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and workers compensation; strike benefits; veteran's benefits; training stipends; alimony; child support; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant. It does not include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits,

such as food stamps; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

5. **Assets:** cash or other resources of the applicant or members of the applicant's household that are readily convertible to cash, which are currently and actually available to the applicant. Assets do not include the principal residence of the applicant, vehicles used for transportation, assets used in producing income, and other assets which are exempt from attachment under State or Federal law. Interests of Native Americans in trust or restricted lands shall not be considered a resource.

## **B. FINANCIAL ELIGIBILITY - INCOME**

### **1. General Income Eligibility Rule:**

- a. The annual income ceiling for receipt of TRLS services shall be 125% of the poverty guidelines published in the Federal Register by the U.S. Department of Health and Human Services ("HHS").
- b. An applicant is financially eligible if the applicant's assets do not exceed TRLS' asset ceiling, or the asset ceiling has been waived, and the applicant's income is equal to or below the annual income ceiling.
- c. TRLS' income ceiling shall change automatically as changes in the poverty guidelines are published by HHS in the Federal Register.

### **2. Special exceptions to the General Income Eligibility Rule**

- a. An applicant whose income exceeds 200% of the applicable Federal Poverty Guidelines is financially eligible if the applicant's assets do not exceed TRLS' asset ceiling, or the asset ceiling has been waived, and:
  - (i) The applicant is seeking to maintain benefits provided by a governmental program to persons whose eligibility is determined on the basis of financial need; or
  - (ii) The Executive Director or her designee determines, based on documentation received by TRLS, that the applicant's income is primarily committed to medical or nursing home expenses and that, excluding such portion of the applicant's income which is committed to medical or nursing home expenses, the applicant would otherwise be financially eligible for service.
- b. An applicant whose income exceeds TRLS' annual income ceiling, but does not exceed 200% of the applicable Federal Poverty Guidelines is financially eligible if the applicant's assets do not exceed TRLS' asset ceiling, or the asset ceiling has been waived, and:
  - (i) The applicant is seeking legal representation in order to obtain benefits provided by a governmental program to persons whose eligibility is determined on the basis of financial need; or

- (ii) The applicant is seeking legal representation to obtain or maintain governmental benefits for persons with disabilities.

c. Income Exceptions:

- (i) An applicant whose household income exceeds TRLS' annual income ceiling, but does not exceed 200% of the applicable Federal Poverty Guidelines, shall be considered financially eligible if the applicant's assets do not exceed TRLS' asset ceiling, or the asset ceiling has been waived, based on consideration of one or more of the following factors as applicable to the applicant or members of the applicant's household:
  1. Current income prospects, taking into account seasonal variations in income;
  2. Unreimbursed medical expenses and medical insurance premiums;
  3. Fixed debts and obligations;
  4. Expenses such as dependent care, transportation, clothing and equipment expenses necessary for employment, job training, or educational activities in preparation for employment;
  5. Non-medical expenses associated with age or disability;
  6. Current taxes; or
  7. Other significant factors that affect the applicant's ability to afford legal assistance, with approval from the Executive Director or her designee.
- (ii) When an applicant is determined to be income eligible pursuant to one or more of the factors listed above, and is provided legal assistance, the basis of the financial eligibility determination shall be documented and retained in the client's records.

**3. Income Prospects**

- a. As part of the financial eligibility assessment, all applicants shall be asked if they have reason to believe their income will change significantly in the near future.
- b. For those applicants who state a belief that their income will change significantly in the near future:
  - (i) The nature of the change and the basis of the belief shall be recorded in the file and
  - (ii) Shall be considered in determining the applicant's financial eligibility.
- c. For those applicants who do not believe their income will change significantly in the near future, no further inquiry is required, unless another reasonable basis for inquiry exists.



### **C. FINANCIAL ELIGIBILITY - ASSETS**

1. The non-excludable asset ceiling for receipt of TRLS services shall be \$8,000 per applicant plus \$2,500 for each additional household member.
2. Non-excludable assets shall be valued at their equity value, which shall be calculated as the current fair market value minus any encumbrances and costs of sale. Unless there is good faith reason to doubt, TRLS shall accept the applicant's estimate of the current equity value of assets. The value of all non-excludable assets shall be considered subject to the asset ceiling.
3. The asset ceiling may be waived for specific applicants under unusual circumstances when approved by the Executive Director or her designee.
  - (i) Unusual circumstances for which the asset ceiling may be waived include, but are not limited to, the following:
    1. The applicant or a member of the applicant's household is over 60 years of age and the assets in excess of the household's asset ceiling are necessary for medical, burial, or necessary living expenses; and
    2. The assets in excess of the household's asset ceiling plus the household's annual income is less than the annual income ceiling for the household.
  - (ii) Whenever an asset waiver is obtained for applicants under unusual circumstances, TRLS shall record the reason for each asset waiver and retain the record of the waiver.

### **II. INCOME AND ASSET ELIGIBILITY OF APPLICANTS WHO ARE VICTIMS OF DOMESTIC VIOLENCE**

In determining the financial eligibility of an individual who is a victim of domestic violence, TRLS will consider only the income and assets of the applicant and members of the applicant's family unit other than those of the alleged perpetrator of the domestic violence, and may not consider the alleged domestic violence perpetrator's income, or assets jointly held by any member of the applicant's household with the alleged perpetrator of the domestic violence.

### **III. GROUP ELIGIBILITY**

- A. TRLS may provide legal assistance to a group, corporation, association or other entity if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel and either:
  1. The group, or for a non-membership group, the organizing or operating body of the group, is primarily composed of individuals who would be financially eligible for LSC-funded legal assistance; or

2. The group has as its principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance and the legal assistance relates to such activity.
- 
- B.** In order to make a determination that a group, corporation, association or other entity is eligible for legal services, TRLS shall consider the resources available to the group, such as the group's income and income prospects, assets, obligations, and either:
- (i) For a group primarily composed of individuals who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons comprising the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance; or
  - (ii) For a group having a principal activity the delivery of services to those persons in the community who would be financially eligible for LSC-funded legal assistance, whether the financial or other socioeconomic characteristics of the persons served by the group are consistent with those of persons who are financially eligible for LSC-funded legal assistance and the assistance sought relates to such activity of the group.
- C.** TRLS shall collect information that reasonably demonstrates that the group, corporation, association or other entity meets the eligibility criteria set forth herein.

#### **IV. SUBSTANTIAL REASON FOR DOUBT**

Whenever there is substantial reason to doubt the accuracy of an applicant's financial eligibility information, an appropriate inquiry to verify the information shall be made in a manner consistent with the attorney-client relationship.

#### **V. REFERRALS FROM OTHER LSC-FUNDED PROGRAMS**

When TRLS receives a request from another LSC-funded program to extend legal assistance or undertake representation on behalf of a client in the same case or matter in which the referring program initially determined the client to be financially eligible, the client's financial eligibility shall not be re-determined, unless there has been a change in the client's financial status or there is substantial reason to doubt the validity of the original determination, provided that the referring program provides TRLS with a copy of the intake form documenting the financial eligibility of the client and TRLS retains a copy of that intake form.

#### **VI. CHANGE IN ELIGIBILITY**

- A.** If, after making a determination of financial eligibility and accepting an applicant for service, TRLS becomes aware that the person has become financially ineligible through a change of circumstances, TRLS shall discontinue representation supported with LSC funds if the change in circumstances is likely to continue and is sufficient to enable the person to afford private legal assistance, and discontinuation is not inconsistent with TRLS' ethical obligations.
- B.** If, after making a determination of financial eligibility and accepting an applicant for service, TRLS later determines that the person is financially ineligible on the basis of later discovered or disclosed information, TRLS shall discontinue representation supported with LSC funds if discontinuation is not inconsistent with TRLS' ethical obligations.

## **VII. TRIENNIAL REVIEW**

At least once every three (3) years, TRLS' Board of Directors shall review this Financial Eligibility Policy and make adjustments as necessary to maintain compliance with then current regulations.



Donna MacRae &lt;donna.macrae@trls.org&gt;

## Income and Asset Policy

Donna MacRae &lt;donna.macrae@trls.org&gt;

Fri, Mar 2, 2012 at 12:03 PM

To: all employees &lt;allemployees@trls.org&gt;

Dear TRLS staff,

At our board meeting on Wednesday, the board of directors approved the new Income and Assets Eligibility Policies, which is attached.

**Please note the following changes/additions to the policy:**

1. The opening paragraphs are all new.
2. The definitions have been tightened up. Pay special attention to the new definition of assets!
3. The income policy is the policy we have been using for several years, however, our prior written policy was not very clear. This policy is much more specific. There has been much confusion over the years regarding clients who are over 125% of poverty. Our policy is that a client can have gross income of 200% of poverty or less, however, if their original income amount is between 126% and 200%, then they **MUST** have a factor (such as a fixed debt). The factor does not need to bring them below the 125% to be eligible. If the reduced percentage is 150%, that's fine and they **ARE** still LSC eligible for services. There are also special provisions for clients seeking government benefits. **Please read the income section very carefully!!! If you have any questions, please call me or speak with your managing attorney.**
4. The asset section has been changed dramatically. Clients can now have multiple vehicles regardless of their value as long as the vehicles are used for transportation! An example of a vehicle that would not be used for transportation would be an antique car that is a collector's item. You no longer have to look up values of cars on Kelly Blue Book!!! This should save a great deal of time for the front line staff. We also no longer have a distinction between liquid and non-liquid assets. The asset limit for all assets is \$8,000 for the applicant **plus** \$2,500 for each additional family member. For instance, if the household has 4 members, then the asset limit would be \$15,500. Assets can also be waived by the Executive Director in special circumstances. **Again, please read this section very carefully and ask questions if you are uncertain about anything!**
5. Section II regarding domestic violence victims is a new section but not a new policy.
6. Section III is a new section regarding group eligibility. Please note that we need documentation in all group files regarding the group's ability (or lack thereof) to hire an attorney. (All group clients should have a group application rather than the individual client application.)
7. Section IV regarding doubt is new. There must be a "substantial" reason for doubt before you question the accuracy of the client's information.
8. Section V is a new section which simply outlines the LSC policy that we have been following for years.
9. Section VI clarifies the LSC policy regarding the two situations regarding change in eligibility.
10. Section VII simply states that the policy must be reviewed every 3 years.

I think this policy is much more specific than our prior policy, and hopefully, it will clarify any confusion you may have had. Please review the new policy as soon as possible. Alan will make the necessary changes to the CMS as soon as he has a chance to do so but it will likely be next week or later.

Thanks!!!

--

*Donna S. MacRae*  
 Pro Bono Director/Managing Attorney  
 Three Rivers Legal Services  
 334 NW Lake City Avenue  
 Lake City, Florida 32055  
 386/752-5960 phone  
 386/752-5999 fax

Attachment: [LSC.guidelines.2012.pdf](#) (1107K)

**LSC.guidelines.2012.pdf**  
 1107K

## BANK STATEMENT RECONCILIATIONS

Proper internal control requires the timely reconciliation of all bank statements to the accounting records. This insures that transactions have been recorded and that no unauthorized disbursements have occurred. The general procedure is that the bank statements for all accounts are initially reviewed by the Executive Director and then reconciled by the Accountant. Following that the Administrator reviews all reconciliations and prepares any required journal entries to correct for any accounting errors and/or to post account accruals for interest and account deductions for service charges.

This section also includes procedures for the allocation of interest accruals and account service charges between the various sources for cash.

THREE RIVERS LEGAL SERVICES, INC.  
CLERICAL PROCEDURES  
BANK RECONCILIATIONS AND ACCRUALS

Overview: These procedures must be completed for each bank account at all banks including operations, payroll, client trust, money market accounts, and petty cash accounts.

<u>PERSON</u>	<u>ACTION</u>
Exec. Director	<ol style="list-style-type: none"><li>1. Receives all TRLS bank statements in the mail or via electronic delivery pursuant to arrangements with each banking relationship.</li><li>2. Reviews each statement for unusual or unrecognized transactions.</li><li>3. Investigates unusual or unrecognized transactions.</li><li>4. Initials front page of bank statement to indicate review. Forwards bank statement to the Accountant for reconciliation.</li></ol>
Accountant	<ol style="list-style-type: none"><li>5. Receives all TRLS bank statements from the Executive Director.</li><li>6. Prints a cash journal from MIP Fund Accounting for the prior month's transactions being reconciled.</li><li>7. Checks that all cash and checks received during the month are reflected on bank statements as either deposits, disbursements or other adjustments in the cash journal.</li><li>8. Determines which checks were paid by the bank during the month and which checks remain outstanding. Investigates particularly old checks (over 6 months).</li><li>9. Completes an Excel spreadsheet bank account reconciliation spreadsheet and reconciles bank balance to the general ledger balance.</li></ol> <p><b>Note:</b> Reconciliation of the client trust bank account includes verifying that the individual client trust balances sums to the bank account balance less any accrued and undistributed interest.</p>

PERSON

ACTION

10. Reports all exceptions to the Administrator including errors in accounting entries, unrecorded transactions, and unauthorized transactions.
11. Delivers bank statement folder with the current reconciliation and supporting documentation to the Administrator for review.
- Administrator 12. Reviews bank statements and reconciliations and verifies concurrence with the general ledger balance. Reconciles any differences.
13. Files reconciliations and bank statements in chronological order in individual bank statement files.
14. Calculates the allocation of accrued interest and account charges based on average monthly grant cash balances.
15. Prepares journal entries for the posting of accrued interest and account charges using allocation code determined in step 14.

## JOURNAL ENTRIES

Journal entries are the means to record accounting transactions that are irregular and/or do not naturally flow through the standard accounting modules of cash disbursements, accounts payable, cash receipts, and/or payroll. Journal entries are also used to make corrections and/or adjustments to transactions posted through a normal channel.

Typical journal entries include the accrual and allocation of interest earned on bank deposits, the allocation of indirect expenses among various grants, and the clearing of offsetting sub-ledger grant balances. Journal entries are used to make year-end accruals and adjustments for accounts receivable, prepaid expenses, accrued liabilities, depreciation expense, et al.

Journal entry batches are printed prior to posting and submitted to the Executive Director for review and approval.



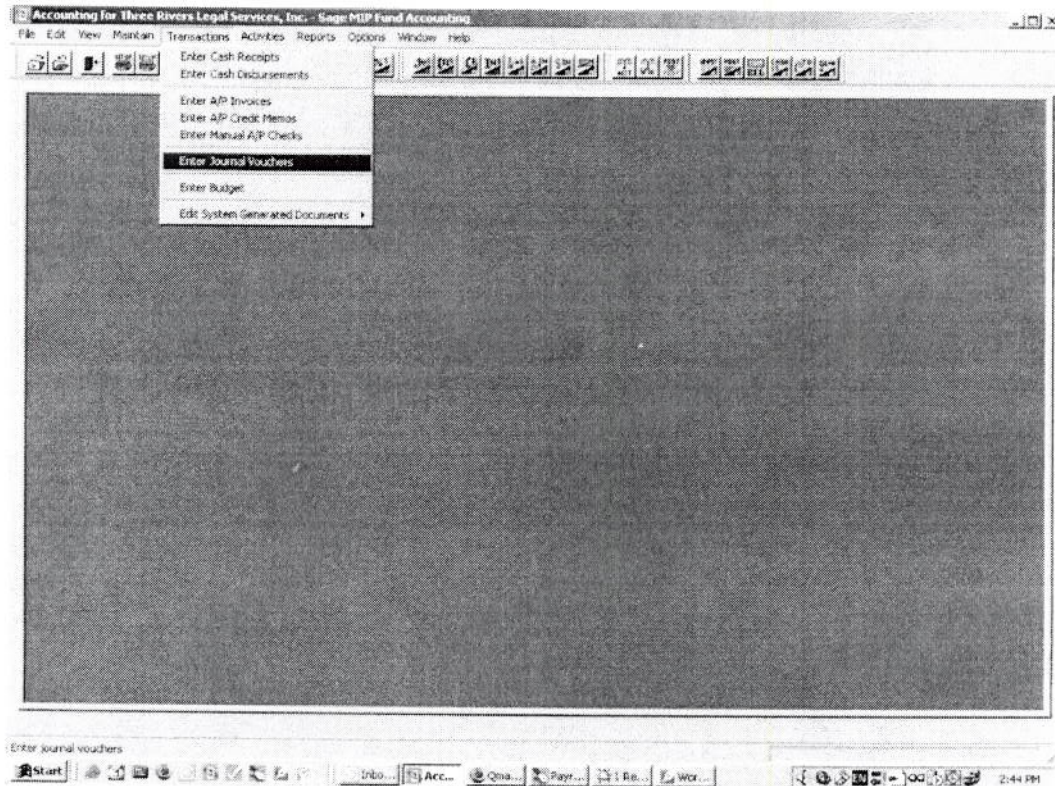
THREE RIVERS LEGAL SERVICES, INC.  
CLERICAL PROCEDURES  
JOURNAL ENTRIES - DAILY PROCESSING

PERSON

ACTION

Administrator

1. Identifies the need for an accrual outside normal accounting modules and/or identifies entry errors that require a journal entry to correct.
2. Prepares explanations and/or working schedules showing calculations supporting the journal entries.
3. Creates a new Journal Voucher batch or adds to an existing batch in the SAGE MIP Fund Accounting General Ledger Module.



Batches are numbered sequentially in the format JV(FY)-### where FY represents the current calendar year and ### represents the sequential batch number.

PERSON

ACTION

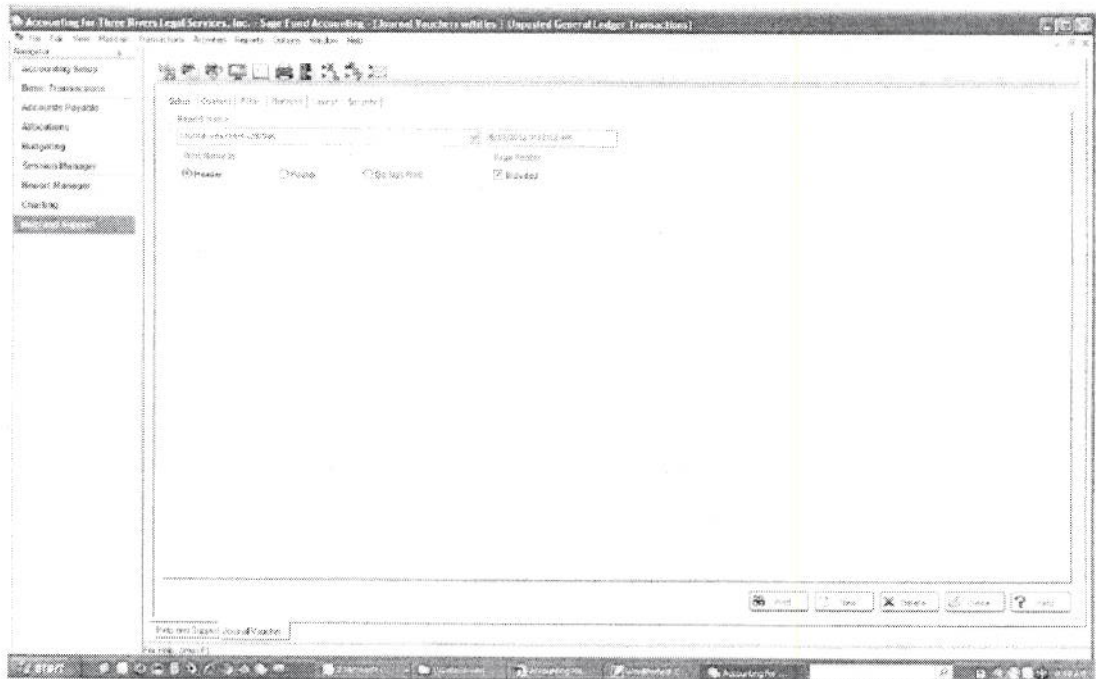
Administrator 5. Click  to save the new record.

THREE RIVERS LEGAL SERVICES, INC.  
CLERICAL PROCEDURES  
JOURNAL ENTRIES - APPROVAL

PERSON

ACTION

Administrator 1. Prints unposted journal entry batch.



2. Presents printout to Executive Director for review and approval.

Executive Director

3. Reviews journal entries, makes inquiries as to purpose, requests supporting documentation if necessary.

4. Initials each page to indicate approval.

Administrator

5. Makes corrections or adjustments as necessary pursuant to Executive Director's direction. Resubmits for final approval if necessary.

6. Posted approved batch.

June 5, 2012

, Esq.

Dear :

Thank you for your recent donation to Three Rivers Legal Services, Inc. Donations such as yours are so important to the continuation of this program, particularly by helping us accrue matching funds for private, state and federal grants.

We acknowledge receipt of your \$ contribution in response to our fundraising efforts. Three Rivers Legal Services, Inc. is a charitable organization, tax exempt under IRS Code Section 501(c)3. As a matter of documentation for income tax purposes, Three Rivers Legal Services, Inc. provided no goods or services to you in consideration, in whole or in part, for your contribution.

Three Rivers Legal Services, Inc. is also required to inform you that it is registered with the Florida Department of Agriculture & Consumer Services under the Solicitation of Contributions Act, Chapter 496, Florida Statutes. Our registration number is SC01394. All contributions received are retained by Three Rivers Legal Services, Inc. and are used to continue to provide services to eligible low income individuals. A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL-FREE WITHIN THE STATE TO (800) HELPFLA (435-7352). REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE."

Three Rivers Legal Services, Inc., is funded in part by the Legal Services Corporation. As a condition of the funding it receives from LSC, it is restricted from engaging in certain activities in all of its legal work-including work supported by other funding sources. Three Rivers Legal Services, Inc. may not expend any funds for any activity prohibited by the Legal Services Corporation Act, 42 USC 2996et seq. or by Public Law 104-134. Public Law 104-134 S504(d) requires that notice of these restrictions be given to all other funders of programs funded by Legal Services Corporation. For a copy of these laws or any other information or clarifications, please contact Alan C. Hill, Administrator, Three Rivers Legal Services, Inc.

As we look ahead, we ask for your continued support for our program and are grateful for the efforts made to assist in the delivery of legal services to the poor.

Sincerely,

Marcia Green  
Pro Bono Coordinator