



FINAL REPORT

LEGAL SERVICES CORPORATION
Office of Compliance and Enforcement

TEXAS RIOGRANDE LEGAL AID, INC.
FOCUSED INTERNAL CONTROL REVIEW
September 24-27, 2012

Recipient No. 744100

I. EXECUTIVE SUMMARY

Finding 1: TRLA's internal controls over its personnel policies and payroll system appear adequate in that the policies and procedures are memorialized in writing and TRLA's procedures evidence proper segregation of duties.

Finding 2: TRLA has mechanisms in place that could ensure compliance with 45 CFR Part 1635 (Timekeeping). However, on-site testing evidenced that staff did not create time records contemporaneously as required by 45 CFR § 1635.3(a)(1) and TRLA's certifications regarding part-time employees and restricted activities did not comply with 45 CFR § 1635.3(d).

Finding 3: The on-site review evidenced that TRLA's written policies and procedures can fully account for fixed asset purchases and support depreciation amounts and property asset balances.

Finding 4: The on-site review evidenced that TRLA's written policies and procedures regarding procurements can prevent unauthorized or fraudulent expenditures and/or duplicative payments. However, TRLA must establish written procurement procedures consistent with 45 CFR Part 1630 and the PAMM §§ 3 and 4.

Finding 5: Based on the on-site review, TRLA is in compliance with 45 CFR Part 1614 (Private Attorney Involvement) in that it has devoted an amount equal to at least 12.5% of its basic field award to the involvement of private attorneys in the delivery of legal services. However, TRLA must fully document its Private Attorney Involvement ("PAI") methodology for indirect costs as required by 45 CFR § 1614.3(e)(1)(i).

Finding 6: From a limited review of sampled PAI contracts certain issues regarding segregation of duties, improper approval authorizations, and inaccurate contractual terms were noted.

Finding 7: From a limited review of TRLA's internal controls over travel, it appears that TRLA's policy does not include a provision for retaining copies of records documenting prior approval authorization and the sampling evidenced no procedures in place that would mitigate the resulting risk of unauthorized travel.

Finding 8: The on-site review evidenced a lack of a supporting documentation in the sampled credit card disbursements. In addition, while TRLA has formal written policies regarding cash disbursements in the form of checks, policy review evidenced no formal written policies for cash disbursements in the form of credit or charge cards or as electronic payments.

Finding 9: From a limited review of TRLA's written policy over cash receipts and sampled cash receipts transactions, it appears that TRLA's procedures include accountability for cash upon receipt and proper segregation of duties.

Finding 10: The on-site review evidenced that TRLA has adequate policies and procedures over bank reconciliation procedures and duties are properly assigned in performing these reconciliations. However, several exceptions were noted including oversight of stale checks, improper reconciliation procedures, a cash receipt being issued from a closed bank account and deposited into the general operating account, and a cash receipt appears to have been deposited into a trust account which was intended for the generating operating account.

Finding 11: The on-site review evidenced that TRLA has adequate policies and procedures over petty cash and duties are properly assigned in safeguarding, disbursing and replenishing cash. However, it appears that TRLA may not meet signatory requirements in at least four (4) branch offices at the time of the review.

Finding 12: The on-site review evidenced that TRLA has adequate policies and procedures over its client trust accounts and duties are properly assigned for safeguarding, disbursing, and reconciling client trust deposits.

Finding 13: The on-site review evidenced that TRLA does not have a written mandatory document retention and periodic destruction policy for its records.

Finding 14: The on-site review evidenced that TRLA developed and implemented a written policy and procedures for cell phones, Personal Digital Assistant devices (“PDA”) and other technology products as recommended by LSC’s OIG.

Finding 15: The on-site review evidenced that TRLA developed and implemented written policies and procedures that prohibit the use of LSC funds to purchase alcoholic beverages, as recommended by LSC’s OIG.

Finding 16: The on-site review evidenced that TRLA has developed and implemented a cost allocation policy, however, the following exceptions were noted (that appear to be the same exceptions identified by LSC’s OIG): (1) TRLA’s cost allocation policy should be more defined and grant specific for each funding source; and (2) TRLA’s criteria for the allocation of front office costs for the Public Defender Program (“PDP”) is inconsistent with the application of its methodology as described in its cost allocation policy.

Finding 17: The on-site review evidenced that TRLA is in compliance with 45 CFR Part 1609 (Fee-generating cases).

Finding 18: The on-site review evidenced that TRLA is in non-compliance with 45 CFR § 1610.5 (Notification), because TRLA failed to provide written notification to all funders that contributed \$250.00 or more.

Finding 19: The on-site review evidenced that TRLA is in non-compliance with 45 CFR § 1612.10 (Recording and accounting for activities funded with non-LSC funds) because: (1) TRLA reimbursed one (1) participant a *de minimis* amount, using LSC funds, for travel costs while participating in legislative and rulemaking activities, and (2) TRLA does not maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities.

Finding 20: The on-site review evidenced that TRLA is in compliance with 45 CFR § 1627.4 (Membership dues or fees).

Finding 21: The on-site review evidenced that TRLA has adequate internal control systems in place for providing fiscal oversight by the Board and has demonstrated its ability to exercise oversight responsibilities, and proper segregation of duties whereby the board and management carry out these assigned responsibilities.

II. BACKGROUND OF REVIEW

Texas RioGrande Legal Aid, Inc. (“TRLA”) was established in 1970 as Texas Rural Legal Aid to provide legal aid to residents in nine (9) counties throughout southern Texas. By 1977, it became the sole provider for migrant legal services on a state-wide basis. In 2002, it merged with four (4) other Texas legal aid programs, and in 2004 took on its current name. As of 2012, TRLA maintained 15 offices throughout the state with their program’s administrative office located in Weslaco. The administrative office oversees the operations for the entire program and ensures compliance with the Legal Services Corporation (“LSC”) Act and regulations, and assists with the efficient provision of services to the program. TRLA operates the Southern Migrant Legal Services Project (“SMLS”) and its administrative office is located in Nashville, Tennessee. SMLS serves migrant farm workers residing in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee through LSC funding by individual migrant grants for each of the six (6) aforementioned service areas.

Funding levels

TRLA is funded principally by LSC and the Texas Access to Justice Foundation. In regards to categories of LSC funding, there are three (3) types of funding sources: Basic Field-General, Basic Field-Native American, and Basic Field-Migrant. See “Request for Proposals,” Service Areas. For 2012, LSC awarded TRLA the third highest total funding (including all three (3) categories) in the nation, totaling \$11,315,674.00. The Office of Information Management’s (“OIM”) records indicate that for 2012, the award consisted of \$9,692,860.00 in Basic Field-General funding, \$29,477.00 in Basic Field-Native American, and \$1,593,337.00 for Basic Field-Migrant funding. Migrant Funding for 2012 for SMLS included: Alabama (\$30,991.00), Arkansas (\$74,450.00), Kentucky (\$40,087.00), Louisiana (\$25,938.00), Mississippi (\$53,757.00), and Tennessee (\$59,744.00). In addition, TRLA received Basic Field-Migrant funding for Texas totaling \$1,308,370.

TRLA also receives smaller grants from a variety of federal, state, and local agencies, including the United States Department of Housing and Urban Development and Internal Revenue Service. Other funding comes from individual donations and grants from various foundations and corporations. In addition, TRLA receives funding from the Texas Task Force on Indigent Defense and eight (8) counties to provide public defender services in criminal cases through offices in Del Rio, Raymondville, and Beeville.

Prior on-site reviews

The Office of Compliance and Enforcement (“OCE”) conducted a Case Service Report/Case Management System (“CSR/CMS”) review in late January/early February of 2008; the Office of Program Performance (“OPP”) conducted its most recent Program Engagement Visit (“PEV”) in late January/early February 2012. The two (2) visits reported no significant regulatory findings or program performance issues. In 2010 and 2011, TRLA submitted its Audited Financial Statement to the Office of the Inspector General (“OIG”).¹ A review of the Statements for the

¹ Pursuant to Section 1009(c)(1) of the LSC Act, Recipients are required to provide for an annual financial statement audit. See Accounting Guide for LSC Recipients (“AGLR”) (2010 Ed.), § 1-5 (explaining the responsibilities of

referenced years did not indicate any significant internal control deficiencies as TRLA's Independent Public Accountant ("IPA") rendered an unqualified opinion concerning TRLA's financial statements.²

From May 2010 through January 2011, the OIG conducted a selected internal control review which assessed the adequacy of TRLA's financial operations and oversight in the areas concerning the program's expenditures and its fiscal accountability. Specifically, the review, the findings of which are memorialized in *Report No. AU 12-03*, made eight (8) recommendations:³

1. That the cost allocation system for Basic Field Grant be fully documented;
2. That the allocation system for Basic Field Grant be modified to include a methodology that allocates a fair share of the central office costs to the Public Defender Programs;
3. That a cost allocation be developed that accurately accounts for the expenditure of LSC funds for each migrant grant and that the LSC funds provided are expended for services applicable to the respective service area;
4. That credit card policies and procedures are followed by staff and that credit cards purchases are supported by receipts and that travel reports are filed as required for all travel;
5. That staff comply with TRLA's policy on out-of-town travel;
6. That written policies and procedures for contracts and consultant agreements comply with the Accounting Guide for LSC Recipients;
7. That written policies and procedures are drafted for controlling the staff's use of cell phones and other electronic devices, including reimbursement policies for staff using personal cell phones for business purposes; and
8. That written policies and procedures are drafted prohibiting the use of LSC funds to purchase alcoholic beverages.

These recommendations were forwarded to LSC Management for additional review and follow-up. It was determined that, in light of the OIG recommendations, a Focused Internal Control ("FIC") review would be the best course of action.

Recipients). An audit of financial statements is the verification by an accountant of the financial statements of a legal entity. Generally Acceptable Accounting Principles ("GAAP") requires not-for profit organizations to present, at a minimum, aggregated financial data for total assets, total liabilities, total net assets (excess of assets over liabilities – similar to fund balances), and total change in net assets. Financial statements submitted to LSC must comply with GAAP. LSC requires that Recipients report their LSC grant activity in a supplemental schedule to annual audited financial statements, if not separately reported in the basic financial statements. *See* AGLR, § 2-4.2 (explaining the requirements of financial reporting).

² An "unqualified opinion" is an independent accountant's judgment that an organization's financial records and statements are fairly and appropriately presented, and in accordance with GAAP.

³ This *Report* was issued June 2012.

A. FIC REVIEW OBJECTIVES

During the week of September 24 through September 27, 2012, OCE conducted an on-site FIC review that was directed at determining the adequacy and sufficiency of TRLA's internal control structure. The visit was conducted by a team of three (3) Fiscal Analysts.

Recipients are required to establish and maintain adequate accounting records and control procedures. *See* Accounting Guide for LSC Recipients ("AGLR") (2010 Ed.) § 1-5 (explaining the responsibilities of Recipients). Therefore, a FIC review assesses the effectiveness of a Recipient's internal controls in achieving certain objectives and the adequacy of its financial records. Internal control is defined as the process put in place, managed, and maintained by the Recipient's Board of Directors and Management, which, if properly designed and consistently implemented, 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 AGLR, § 1-1 (providing a definition of terms used throughout the AGLR).

Therefore, unlike other types of review, a FIC review is concerned solely with internal controls, financial records, and accounting policies as it seeks to answer the following questions:

1. What are the current internal controls;
2. What role does segregation of duties play in the recipient's internal control structure;
3. How are the internal controls implemented; and
4. Is the implementation effective?

These questions do not have standard answers as each Recipient develops a system of internal controls that is effective and necessary based on its size, needs, and staff. Therefore, while internal controls may look similar among different Recipients and have the same objective goal, each Recipient tailors its internal control system to best accommodate its needs. *See* AGLR, § 3-3 (describing the characteristics of an adequate internal control system).

Scope of FIC review

The fiscal review period was from January 1, 2010 through July 30, 2012 and was conducted on-site in Weslaco, Texas, at TRLA's administrative office. This review encompassed an analysis of financial records, fiscal policies, and procedures, and an evaluation of specific sampled internal controls, as well as interviews with upper and middle Management and fiscal staff. Specifically, OCE team members met with and interviewed members of TRLA's upper and middle management and fiscal staff including the Executive Director, Deputy Director, Chief Financial Officer, Director of Administration, Director of Human Resources, Assistant Director of Finance, Development Director, Grants Manager, Pro Bono Coordinator, Payroll Accountant,

and Accountant(s). As appropriate and applicable, the review team also interviewed various members of TRLA's staff and conducted judgmentally selected and targeted testing of sampled fiscal transactions.

As previously noted, the OIG issued a Report (No. AU 12-03) that resulted in a number of internal control and non-internal control Recommendations. As these Recommendations were referred to LSC Management by the OIG, TRLA's actions, or lack thereof, in implementing the Recommendations were assessed and considered during the FIC review, in addition to evaluating the adequacy and effectiveness of TRLA's internal controls and assessing its fiscal policies and procedures. In particular, the review team assessed TRLA's progress on developing an accurate cost allocation methodology for the Basic Field Grant and Migrant Funding.

As a FIC review requires an evaluation of many of the internal controls discussed in *Report No. AU 12-03* to the extent there was overlap, that is an OIG issued Recommendation concerned an area that the review team would have evaluated during the normal course of the FIC review, the review team determined TRLA's compliance in that area and evaluated TRLA's response to the OIG Recommendation. Therefore, the fiscal visit assessed how TRLA has strengthened its internal controls as recommended by *Report No. AU 12-03*. As to the non-internal control Recommendations, the scope of this FIC review was expanded to evaluate Recommendations that would not normally be evaluated during a FIC review. *See Report No. AU 12-03*, Recommendation Nos. 1-3.⁴

Fiscal authority

In accepting LSC funds, Recipients agree to adopt certain fiscal policies and procedures governing the administration of these funds. *See AGLR*, § 1-5 (describing the responsibilities of Recipients). However, the implementation of these policies and procedures will be unique to each Recipient, as the levels of internal controls must be appropriate to its size and structure.⁵ Therefore, while the AGLR through the fundamental criteria and the internal control checklist provide a listing of the elements or characteristics of an adequate accounting and financial reporting system, these are guides that can assist in directing a Recipient towards developing an internal control structure that will improve the effectiveness of its operations, the reliability of its financial information, compliance with laws and regulations, and the safeguarding of its assets. *See AGLR*, § 3-5 (defining fundamental criteria); *also see AGLR*, App. VII (explaining the internal control checklist).

In determining the adequacy of TRLA's internal control structure and its accounting policies and procedures, the review team used the fundamental criteria and the internal control checklist as guides while considering factors unique to TRLA; *i.e.* its size, its service area. In accordance with the approved work plan, specific accounting areas were reviewed:

⁴The non FIC Recommendations are: 1. That the cost allocation system for Basic Field Grant is fully documented; 2. That the allocation system for Basic Field Grant is modified to include a methodology that allocates a fair share of the central office costs to the Public Defender Programs; and 3. That a cost allocation is developed that accurately accounts for the expenditure of LSC funds for each migrant grant and that the LSC funds provided are expended for services applicable to the respective service area.

⁵*See AGLR*, § 3-3 (describing the characteristics of an adequate internal control system); *also see AGLR*, § 3-4

INTERNAL CONTROL AREA	FUNDAMENTAL CRITERIA	INTERNAL CONTROL CHECKLIST	PAMM	REGULATION	OIG RECOMMENDATION
<i>General</i>		Appendix VII, § A			
<i>Personnel and Payroll</i>	AGLR, § 3-5.5	Appendix VII, § B			
<i>Property control</i>	AGLR, § 3.5.4	Appendix VII, § C			
<i>Procurement</i>	AGLR, § 3.5.4(a)	Appendix VII, § D	§§ 3, 4	45 CFR Part 1630	✓
<i>Legal consultants/Contract services</i>	AGLR, § 3-5.16	Appendix VII, § E Appendix VII, § D-2,6, 11		45 CFR Part 1614 ⁶ 45 CFR Part 1627 ⁷	✓
<i>Travel</i>		Appendix VII, § F			✓
<i>Controls over cash disbursement</i>	AGLR, § 3-5.4	Appendix VII, § G		45 CFR Part 1630	
<i>Controls over cash disbursements</i> ⁸		Appendix VII, § G1			
<i>Controls over cash disbursements</i> ⁹		Appendix VII, § G2			
<i>Controls over cash disbursements</i> ¹⁰		Appendix, VII, § G3			
<i>Controls over cash receipts</i>	AGLR, § 3-5.4	Appendix VII, § H			

⁶ Private Attorney Involvement.

⁷ Subgrants and Membership Fees or Dues.

⁸ As applied to checks.

⁹ As applied to electronic transactions.

¹⁰ As applied to credit/debit cards.

INTERNAL CONTROL AREA	FUNDAMENTAL CRITERIA	INTERNAL CONTROL CHECKLIST	PAMM	REGULATION	OIG RECOMMENDATION
<i>Bank reconciliation procedures</i>	AGLR, § 3-5.2(d)	Appendix VII, § I			
<i>Segregation of duties¹¹</i>		Appendix VII, § J			
<i>Client trust accounts</i>	AGLR, § 3-5.7	Appendix VII, § L			
<i>Electronic banking</i>	AGLR, § 3.5.15	Appendix VII, § M			
<i>Timekeeping requirement</i>				45 CFR Part 1635	
<i>Cell phone policy</i>					✓
<i>Prohibited purchases</i>				45 CFR Part 1630	✓
<i>Cost Allocation</i>				45 CFR Part 1630	✓
<i>Fee generating cases</i>				45 CFR Part 1609	
<i>Donor notification</i>				45 CFR § 1610.5	
<i>Non-LSC funds with legislation and/or rulemaking</i>				45 CFR § 1612.10	
<i>Membership fees or dues</i>				45 CFR § 1627.4	
<i>Board oversight</i>	AGLR, § 1-7				

¹¹ Each fiscal area reviewed included an assessment of segregation of duties.

A significant portion of the review was designed to determine compliance with the AGLR, as it is LSC's primary authority for evaluating a Recipient's internal control structure. However, due to the Recommendations issued in the OIG's *Report*, as well as how certain internal control requirements inter-connect with fiscal regulations and the Property Acquisition and Management Manual ("PAMM"), it was also necessary, for this FIC team to determine TRLA's compliance with certain regulatory requirements. Specifically, the FIC team assessed TRLA's compliance with 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 1612 (Restrictions on lobbying and certain other activities); 45 CFR Part 1614 (Private attorney involvement); 45 CFR Part 1627 (Subgrants and membership fees or dues); 45 CFR Part 1630 (Cost Standards and Procedures); 45 CFR Part 1635 (Timekeeping Requirement) and PAMM, §§ 3 and 4.¹²

B. OVERALL OBSERVATIONS

During the on-site review, the OCE review team kept TRLA Management informed of any compliance issues and/or weaknesses identified in its fiscal internal control requirements. This was accomplished by discussing issues with the appropriate staff and at meetings which were conducted at the conclusion of each review day with TRLA's Executive Director and/or its Chief Financial Officer. On Monday, October 1, 2012, (after the conclusion of the visit on September 27, 2012), OCE held a brief exit conference by telephone during which OCE briefed TRLA on its preliminary findings. This meeting was attended by members of TRLA's senior Management. OCE shared with TRLA the areas in which weaknesses were identified in its fiscal internal control requirements and where non-compliance with the regulations was evidenced. OCE also provided recommendations to strengthen TRLA's fiscal internal controls. Additionally, TRLA was notified of areas reviewed where internal controls appeared adequate and there were no associated findings or recommendations by OCE. TRLA Management was informed that all findings presented during the telephone conference were preliminary in nature and subject to change upon further examination. TRLA was also advised that all findings would be contained in the Draft Report which would be provided to the program, and that TRLA would have the opportunity to respond to those findings.

A limited fiscal review identified some weaknesses in the following areas of internal controls: personnel and payroll; procurements; legal consultants/contract services; travel; cash disbursements; bank reconciliation procedures; segregation of duties; petty cash; electronic banking; document retention and periodic destruction policy; purchase of alcoholic purchases; and cost allocation. Additionally, TRLA exhibited regulatory non-compliance in the following

¹² Due to time constraints, no review was conducted of former 45 CFR Part 1642 prohibiting the claiming, and the collection and retention, of attorneys' fees even though it was in the approved work plan. This regulation was repealed because LSC's Board of Directors determined that this prohibition was no longer necessary or appropriate. *See* Fed. Reg. Vol. 75 No. 28 page 6817 (2010). 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).

areas: sending of notification letters; restrictions on lobbying and certain other activities; private attorney involvement; subgrants; cost standards and procedures; and timekeeping requirements.

During the course of the on-site review, TRLA staff remained professional and cooperative. Interviews with Management demonstrated a commitment to implementing the necessary internal controls to safeguarding its resources. For example, in light of the OIG issued Recommendations, TRLA's Board of Directors adopted internal control measures and policies in the following areas on September 22, 2012 during their annual Board meeting:

1. Allocation measures;¹³
2. Out-of-town approval;¹⁴
3. Contracts and consulting agreements;¹⁵
4. Cell phones and other electronic devices;¹⁶ and
5. Purchase of alcoholic beverages.¹⁷

However, the FIC review determined that TRLA's internal controls, as noted in detail below, are generally weak and need improvement in order to strengthen the fiscal integrity of the program's accounting systems and procedures. In addition, because TRLA in several areas has informal policies and/or procedures, it inconsistently implements its own policies, which create a weak internal control environment. TRLA seemed receptive to suggestions for improvement and it would benefit from fiscal training and technical assistance.

On April 3, 2013, OCE issued its Draft Report and advised TRLA that it had 30 days within which to provide comments. On April 22, 2013, TRLA requested, and was later granted, an extension of time to submit those comments. TRLA's comments were received by OCE on June 28, 2013.

¹³ OIG Recommendation Nos. 1-3 in *Report No. AU 12-03*: Ensure 1. that the cost allocation system for Basic Field Grant is fully documented; 2. that the allocation system for Basic Field Grant is modified to include a methodology that allocates a fair share of the central office costs to the Public Defender Programs; and 3. that a cost allocation is developed that accurately accounts for the expenditure of LSC funds for each migrant grant and that the LSC funds provided are expended for services applicable to the respective service area.

¹⁴ OIG Recommendation No. 5 in *Report No. AU 12-03*: Ensure that staff comply with TRLA's policy on out-of-town travel.

¹⁵ OIG Recommendation No. 6 in *Report No. AU 12-03*: Ensure that written policies and procedures for contracts and consultant agreements comply with the AGLR.

¹⁶ OIG Recommendation No. 7 in *Report No. AU 12-03*: Ensure that written policies and procedures are drafted for controlling the staff's use of cell phones and other electronic devices, including reimbursement policies for staff using personal cell phones for business purposes.

¹⁷ OIG Recommendation No. 8 in *Report No. AU 12-03*: Ensure that written policies and procedures are drafted prohibiting the use of LSC funds to purchase alcoholic beverages.

III. FINDINGS

Finding 1: TRLA’s internal controls over its personnel policies and payroll system appear adequate in that the policies and procedures are memorialized in writing and TRLA’s procedures evidence proper segregation of duties.

Personnel and payroll are two (2) areas in the AGLR that interconnect because an internal control weakness in personnel procedures and policies may directly impact the accuracy of an employee’s payroll records.¹⁸ Personnel policies establish the objective procedures regarding an employee’s treatment, rights, and obligations in performance of his/her work. Although personnel policies vary from organization to organization, personnel policies should be in writing and should require employees to take annual vacations. *See* AGLR, App VII, § A-14 (internal control checklist inquiring whether employees are required to take annual vacations); *See also* AGLR, App VII, § B-11 (internal control checklist inquiring whether personnel policies are established in writing). According to the AGLR, personnel policies may include a nepotism policy prohibiting employment of individuals that would result in a conflict of interest. *See* AGLR, App VII, § B-6 (internal control checklist inquiring whether personnel policies prohibit employment of individuals that would result in a conflict of interest). Therefore, while the substance of personnel policies will differ, well designed personnel policies guard against favorable treatment of one (1) employee over another employee, thereby ensuring that a Recipient’s payroll records are accurate and free of intentional fiscal abnormalities.

A Recipient’s payroll system and procedure should be designed to ensure that its employees are paid properly, in a timely fashion and support payroll-related reporting requirements to external agencies. Therefore, a Recipient’s payroll process should be administered in a manner that maintains the integrity of its accounting system and ensures that every payment issued or leave approved is properly authorized and adequately supported with documentation. A weakness in this area may result in improper amounts withheld from employees and/or unauthorized disbursements. *See* AGLR, § 3-5.5 (explaining the key elements and criteria of a payroll process).

According to the AGLR, a Recipient’s payroll register, which is a physical or electronic document that records all the deductions connected with a specific payroll period, should list all payments to employees by name, check number, gross pay, withholdings, and net pay; and employees should be provided gross and net information with payroll checks. *See* *Id.*, § 3-5.5(a) (explaining the key elements and criteria of the payroll register). A proper payroll and personnel system will incorporate certain elements and/or practices including:

1. Approval of salary and wage rates by an authorized individual;
2. Records documenting payroll expenses to accounts/funds/cost centers and cumulative individual earnings and withholdings;

¹⁸ Payroll records accumulate payroll data as required by Federal, state, and local laws. The following payroll data shall be included in each employee’s payroll file: wage or salary authorization, employment contracts, Federal W-4 withholding form, State withholding form, authorization for all other payroll deductions, and authorization for all wage/salary deductions. *See* AGLR, App II (describing accounting records).

3. Supervisor approval of individual employee attendance or time records;
4. Approval and signature of payroll checks and adjustments by persons independent of payroll preparation;
5. Separate and distinct payroll/personnel files for each employee, and
6. Payrolls should be disbursed from an imprest bank account restricted for that purpose.¹⁹

See Id., § 3-5.5; App VII, § B (regarding Payroll and Personnel)

i. Procedures and internal controls regarding payroll and personnel

Interviews with the Chief Financial Officer, a review of the completed “Internal Control Worksheet” (as completed by TRLA), and policy review indicated that TRLA’s payroll system is a highly layered process with multiple verifying safeguards in place. On-site observations determined that the accounting duties are adequately segregated such that no one (1) staff member is solely responsible for all aspects of the payroll process. TRLA’s layered payroll process creates regularly and routinely conducted independent checks and proofs. *See* AGLR, § 3-5 (explaining the elements to be considered in establishing an adequate internal control structure).

The first step of the process requires staff to electronically submit timesheets for approval through TRLA’s Client Tracking System.²⁰ The timesheet is then approved by the employee’s immediate supervisor the week following each bi-weekly pay period.²¹ TRLA’s accounting policies and procedures manual indicated that all overtime hours worked and leave time taken must be approved before the electronic timesheet is submitted. Once submitted, the approved timesheets are downloaded and reviewed for abnormalities by printing out a report with the following categories: (1) employee name and number; (2) annual leave hours taken; (3) sick leave hours taken; (4) overtime hours to be paid; (5) floating holidays taken; (6) “comp” time taken; (7) “comp” time earned; and (8) regular hours worked. The Payroll Accountant then enters all of this data from the “Employee Data File” and the “Data Modification Form”²² into the payroll program where all changes and/or adjustments are recorded and printed. Another Accountant verifies that all changes were entered correctly.

The Accounting Operations Manager compares the computer print-out to the changes noted in the “Data Modification Form.” If there are any errors, an Accountant makes the corrections in the program and runs a corrected print-out, which the Chief Financial Officer approves, by initialing.

¹⁹ An imprest account is one that always has the same balance; an exact amount of cash is deposited into the account for a known specific future purpose (such as an upcoming payroll), and the same amount leaves the account when the funds for that purpose are expended.

²⁰ TRLA’s customized electronic timekeeping and payroll system tracks and accounts for both attorney and paralegal time spent working on client activity (by case, matter, and supporting activity), and all employee time and attendance activity for payroll processing.

²¹ This practice is consistent with AGLR, App VII, § B-12.

²² The “Data Modification Form” is a form that indicates an employee’s change in status, *i.e.* leave without pay, extended leave of absence.

Timecards²³ are then generated in the accounting program for each active employee and the data from each employee's timesheet on the "Client Tracking System" is downloaded into the appropriate employee generated timecard. Two (2) Accountants verify the information on the timecards to the electronically staff submitted timesheet. If any errors are noted, the Payroll Accountant makes corrections in the program and runs a corrected print-out.

TRLA's accounting policies and procedures manual indicated that a "Payroll Verification Report" is printed and checked by the Chief Financial Officer and the Payroll Accountant. If there are any discrepancies, the Payroll Accountant makes the corrections in the program and runs a corrected print-out, which the Chief Financial Officer approves, by initialing. The payroll register, including name, salary, number of hours and deductions, is then printed and verified by the Chief Financial Officer. Upon approval, the direct deposit file is generated and uploaded using the Compass Bank website by the Accounting Operations Manager. The Accountant makes the payroll deposit which is approved by the Chief Financial Officer or the Assistant Director of Finance.²⁴

According to TRLA's vacation policy, employees hired with the expectation of becoming permanent employees begin to accrue annual leave with pay from the first day of employment. Leave requests may be approved in advance by an employee's primary supervisor, who consults with the applicable employee's Team and Branch Managers in granting such requests. A request for extended leave for advocates should state that all applicable Team and Branch Managers have been notified, and that scheduled Duty Attorney rotations are covered. An employee is entitled to use, with prior approval, annual leave any time such leave is accrued. If an official TRLA holiday falls during an employee's annual leave, the holiday is not deducted from accrued leave. Annual leave may be taken either all at once or in parts. Again, prior approval must be obtained from the employee's primary supervisor.

Based on the procedures described above, TRLA's internal controls appear adequate to ensure that it accurately compensates employees, maintains accurate leave records, and properly records payroll transactions in the accounting system in accordance with Management's authorizations and compliance with applicable policies, procedures and employee bargaining agreements and contracts.

According to TRLA's accounting policies and procedures manual, control measures have been implemented through the use of authorized passwords and codes to secure the personnel and payroll data of its employees. According to staff, TRLA's personnel office has procedures in place to notify the payroll office of any changes governing time and attendance, leave accruals,

²³ The timecard is a document in TRLA's electronic payroll system that requires time and attendance data to be populated (pay rates, hours worked, vacation time taken, etc.) for each employee.

²⁴ A majority of TRLA's employees have direct deposit, however the Payroll Accountant indicated that one (1) or two (2) checks are printed each payroll cycle. The following procedures are followed: (1) the checks and payroll register are reviewed and approved first by the Chief Financial Officer, and then by the Director of Administration; and (2) following approval, the payroll checks are delivered to a different Accountant who stamps all checks with a signature stamp, puts them in individual windows envelopes, and gives them to the clerk/messenger with a form listing employees by office or other address. An Accountant then verifies that the checks have been sent to the correct location.

and controls over paychecks. In addition, staff indicated that the personnel office initiates and ensures that all payroll transactions are properly documented and independently verified with appropriate approvals and authorizations.

TRLA explained that background checks are conducted for all prospective employees.²⁵ According to the Director of Human Resources, the hiring manager conducts all reference checks on prospective employees, prior to hiring, and occasionally, the hiring manager may leave interview notes on resumes. The resumes are retained in the employee's file and maintained in the Human Resources Department. *See* AGLR, App VII, § B-13 (internal control checklist inquiring whether records regarding personnel actions are maintained). Newly hired employees are added to the payroll system through the "Personnel Change/Salary Authorization Form," which is filled out and approved by the Director of Human Resources, approved by the Director of Administration and the Chief Financial Officer, and given to the Payroll Accountant. Using the data on this form, the W-4, and the insurance applications, the Payroll Accountant fills out an "Employee Data File" for all new employees. New employees are included on the "Payroll Modification" form as well.

Transfers, terminations, and salary changes are noted on the "Personnel Change/Salary Authorization Form" and are handled in the same manner as for new employees. Any changes from the previous and current payroll, including terminations, address changes, transfers, or deductions are filled out on the "Data Modification Form."

ii. On-site testing

While on-site, the review team tested the payroll system for consistency to TRLA's policy and procedure and for any abnormality in the required documentation. From a judgmentally selected sample of 10 employees' electronic time sheets (time and attendance records) covering two (2) bi-weekly pay periods in 2010, 2011, and 2012, it was determined that time and attendance records were submitted in a timely manner, reviewed, approved, processed, and accurately coded for accounting and distribution. Additions, separations, wage rates, salaries and deductions were properly authorized, recorded, and processed within the "Client Tracking System" in a timely manner.²⁶ Payroll data was properly reconciled in a timely manner and done within the proper accounting period. Payroll journal entries and supporting documentation were reviewed and approved by the appropriate level of Management. Additionally, personnel data was maintained confidentially by the Director of Human Resources.

With two (2) exceptions, the sampled testing indicated that TRLA complied with significant finance-related legal requirements including employee bargaining agreements and contracts. The first exception involved the Director of Litigation's payroll records/personnel file.²⁷ The

²⁵ This practice is consistent with AGLR, App VII, § B-4 (internal control checklist inquiring whether procedures provide for reference checks).

²⁶ Note from this sample of 10 employees, one (1) received a wage rate adjustment and one (1) had a leave of absence (separated) during the review period.

²⁷ The following payroll data shall be included in each employee's personnel file: wage or salary authorization, employment contracts, Federal W-4 withholding form, State withholding form, authorization for all other payroll deductions, and authorization for all wage/salary actions. *See* AGLR, App II (describing accounting records).

Director of Litigation's personnel change form indicated a return date of August 13, 2012 from an extended leave of absence. However, the time and attendance record and timekeeping record indicated two (2) hours worked on August 7, 2012. As a result of this discrepancy, the Draft Report required TRLA to do the following:

- a. If there is a discrepancy between the actual return date and the date listed on his personnel change form, TRLA must determine whether this employee's payroll records (*i.e.* vacation and sick leave records, pay stub) are accurate and correct any inaccuracies through proper accounting procedures as outlined in TRLA's accounting manual;
- b. Determine whether this employee was overpaid or underpaid for that payment cycle and take appropriate measures to correct any errors; and
- c. Include in its comments to the Draft Report, a statement explaining how this required corrective action was implemented and provide all supporting documentation.

In its response to the Draft Report, TRLA indicated that the Director of Litigation was not paid for the work performed on August 7, 2012, and that his correct return date was August 13, 2012. Based on TRLA's response to this required corrective action, and OCE review of same, required corrective action nos. 1(a-c) are closed.

Secondly, the sampling indicated that TRLA had one (1) employee listed on its employee staff listing whose name is slightly different (by one (1) letter) from a similar name that appears on its payroll register. After the on-site visit, TRLA provided documentation that indicated a name change for this employee, however, the name change provided still does not address the problem identified on the payroll register. As a result of this discrepancy, the Draft Report required TRLA to verify that the name on the payroll register and employee staff listing is one in the same by providing a copy of the employee's W-2 statement for 2012.

In its response to the Draft Report, TRLA verified that the name on the payroll register and the name on the employee staff listing are the same by including a copy of the employee's W-2 statement for 2012 as part of its response. Based on TRLA's response to this required corrective action, and OCE review of same, required corrective action no. 2 is closed.

In the Draft Report, it was recommended that TRLA incorporate some type of notification procedure that would provide notice to an employee's supervisor (*i.e.* through email or memo) as to the employee's start or hire date. This control measure would inform supervisors when (new, current, or former) employees are scheduled to start work and help alleviate any discrepancies between start and return to work dates as indicated on the personnel change form and time record; and periodically verify the names of the employees listed on its employee staff listing to the names of the employees listed on its payroll register. TRLA had no response to this recommendation.

Finding 2: TRLA has mechanisms in place that could ensure compliance with 45 CFR Part 1635 (Timekeeping). However, on-site testing evidenced that staff did not create time records contemporaneously as required by 45 CFR § 1635.3(a)(1) and TRLA’s certifications regarding part-time employees and restricted activities did not comply with 45 CFR § 1635.3(d).

45 CFR Part 1635 is intended to improve accountability for the use of all funds of a Recipient by:

- a. 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;
- b. Enhancing the ability of the recipient to determine the cost of specific functions; and
- c. Increasing the information available to LSC for assuring recipient compliance with Federal law and LSC rules and regulations.

Specifically, 45 CFR Part 1635 notes 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. *See* 45 CFR § 1635.3(d).

i. Procedures and internal controls regarding timekeeping

Pursuant to LSC regulations, TRLA’s attorneys and paralegals are required to account for the time spent on all cases, matters, and supporting activities. TRLA additionally requires the same of all other legal staff (e.g. social workers, outreach workers, et al.).²⁸ Such time records are maintained on the Client Tracking System which accounts for employee time spent assisting clients.

²⁸ TRLA’s attorneys, paralegals and support staff who efforts are spent working on cases, matters, and supporting activities as part of the Public Defender Program are required to submit their time utilizing TRLA’s Client Tracking System while complying with timekeeping requirements.

Interviews with the Chief Financial Officer and Director of Human Resources, as well as policy review revealed that TRLA's Client Tracking System (for timekeeping records) uses log entries to record time spent on each case, matter, and supporting activity. TRLA's attorneys, paralegals, social workers, outreach workers, *etc.* account for the time spent on all cases, matters, and supporting activities utilizing the timekeeping system.

The logs are also used to maintain a record of actions taken on a case, which is particularly useful when more than one (1) advocate is working on the same case at different times. This detailed log of actions helps to avoid duplication of efforts. TRLA support staff are also required by TRLA policy to log any case-related activities in the client's Client Tracking System file. This ensures that anyone in touch with the client will have the most up-to-date information on case activities. Also, each team has a Matters file (all Matters files start with numerical code "88"), and most advocates have an individual Matters file.²⁹ Also, the "Client Tracking System" contains activity log codes for each activity type. The one most applicable to the activity should be selected, *i.e.* email, court contact, closing case actions.

ii. On-site testing

While on-site, a cross section of attorney and/or paralegal timekeeping records from a judgmentally selected sample generated from TRLA's "Client Tracking System," disclosed that timekeeping records are not always contemporaneously created and accounted for in accordance with 45 CFR § 1635.3(b)(1) (requiring that time records be created contemporaneously and account for time by date and in increments not greater than one-quarter of an hour). Six (6) of the timekeeping records sampled indicated non-compliance with 45 CFR § 1635.3(b)(1). In several instances, the timekeeping records indicated the omission of time worked in days and/or hours. TRLA's policy states that "Failure to comply with these requirements may result in disciplinary action." TRLA should enforce its timekeeping policy in order to encourage staff compliance with 45 CFR § 1635.3(b)(1). As a result of these inconsistencies, the Draft Report required TRLA to do the following:

3. Ensure that all attorney and paralegal time spent working on cases, matters, and supporting activities is accounted for by time records which record the amount of time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorney and paralegal for which compensation is paid by TRLA; and
4. Enforce its timekeeping policy, which states that "[f]ailure to comply with these requirements may result in disciplinary action."

In its response to the Draft Report, TRLA indicated that attorneys, paralegals, and other staff working on cases are required to document time spent on cases, matters, and supporting activities through its timekeeping system. In addition, TRLA indicated that it enforces its timekeeping policies by periodic reminders to all staff via telephone calls, email, and at staff conferences, as

²⁹ TRLA utilizes a team approach to delivering services. Teams are structured around substantive areas such as family law or housing, and team members are located in offices around the program.

well as specific admonitions and disciplinary warnings to staff members who fail to log their time into the case management system. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 3 and 4 are closed.

Additionally, the on-site review evidenced that TRLA failed to certify in writing all of its part-time attorneys who also work part-time for an entity which engages in restricted activity. *See* 45 CFR § 1635.3(d). The review indicated that TRLA employs a Director of Litigation who works at TRLA part-time. This individual does not work for an organization, but maintains a private practice which, according to interviews with the Director of Human Resources, engages in restricted activities. TRLA explained that it excluded this attorney's name from its part-time certification form because while this individual engages in restricted activity through his private law practice, he is not an employee of another organization. As a result of this discrepancy, the Draft Report required TRLA to do the following:

5. Include on all future part-time certification forms the names of all part-time employees (attorneys and paralegals) who also work for an organization which engages in restricted activities; and
6. Submit, as part of its comments to the Draft Report, a most recent copy of this certification.

In its response to the Draft Report, TRLA disagreed with this Finding and asserted that it is not required to obtain certifications for part-time attorneys who also maintain a part-time private law practice. TRLA stated that interpretation of the regulation has never been made generally known to Recipients, and they believed that the interpretation in the Draft Report is erroneous. TRLA argued that the certification requirement applies only to attorneys or paralegals who also work "part-time for an organization that engages in restricted activities." However, TRLA argued that the term "organization" is not defined in 45 CFR Part 1635 and the common usage of that term does not include a private law practice. Where the Corporation has sought to identify private law firms or practitioners, it has used other terminology, e.g., "person or entity" in 45 CFR § 1610.7. According to TRLA an "organization" in this context is a non-profit corporation or non-governmental entity that, at least in part, engages in activities that are restricted under LSC regulations. TRLA indicated that the Draft Report ignores the plain meaning of the term and, without citing any authority, asserted that "organization" includes a private law practice, whether operating as a sole practitioner or as a law firm. TRLA's response stated that this would be an overly broad interpretation of the term "organization" that would require obtaining quarterly certifications from 119 PAI contract attorneys. However, TRLA indicated that if LSC officially interprets the term "organization" in Part 1635 to include private practitioners, then it would obtain the 45 CFR § 1635.3(d) certifications for part-time attorneys who also maintain a private law practice.

However, any distinction, for the purpose of 45 CFR Part 1635, between "private practice" and an "organization," is insignificant because the focus of this regulation is on the nature or substance of activity undertaken, as opposed to the type of entity which undertakes the activity. *See* 45 CFR § 1635.2(c) (explaining that restrictive activities are those activities that Recipients

may not undertake as set out in 45 CFR Part 1610).³⁰ Additionally, this requirement is imposed on part-time employees of Recipients, not PAI attorneys, so TRLA's argument does not make sense as PAI attorneys are not 'part time' employees. Although, TRLA disagreed with this corrective action, documentation was provided by TRLA, showing the most recent copies of certification of attorneys who worked part-time during the first quarter of 2013 (for TRLA), and part-time for another organization. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 5 and 6 are closed. However, LSC will take TRLA's arguments under further review and respond via separate correspondence.

In the Draft Report, it was recommended that TRLA provide training to all staff regarding LSC and TRLA requirements regarding timekeeping and provide, as part of its comments to the Draft Report, the date said training occurred (or a date certain when said training will occur), and a copy of the staff attendance sheet, along with any materials provided; and periodically send out notification reminders to employees of the timekeeping requirements. TRLA had no response to this recommendation.

Finding 3: The on-site review evidenced that TRLA's written policies and procedures can fully account for fixed asset purchases and support depreciation amounts and property asset balances.

A Recipient's property management system and procedures should be designed to provide reasonable assurance that assets are not vulnerable to loss, theft, and unauthorized use. Therefore, all equipment costs should be appropriately recorded in the Recipient's financial management system and subsequently reported on its financial statements. A Recipient's

³⁰ According to 45 CFR § 1610.2(a): "Purpose prohibited by the LSC Act means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act: (1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR Part 1608 of the LSC Regulations (Political activities); (2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities); (3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC regulations (Fee-generating cases); (4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings); (5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions); (6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities); (7) Section 1007(b)(8) of the LSC Act (Abortions); (8) Section 1007(b)(9) of the LSC Act (School desegregation); and (9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion)." According to 45 CFR § 1610.2(b): "Activity prohibited by or inconsistent with Section 504 means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections: (1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting); (2) Sections 504(a) (2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy); (3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions); (4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Client identification and statement of facts); (5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities); (6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping); (7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens); (8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training); (9) Section 504(a)(14) (Abortion litigation); (10) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation); (11) Section 504(a)(16), as modified by Section 504(e), and 45 CFR Part 1639 of the LSC Regulations (Welfare reform); (12) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug related evictions); and (13) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation)."

property management process should be administered in a manner that maintains the integrity of its financial management system and that every asset acquired is properly received and accepted. A weakness in this area may result in the inability to fully account for fixed asset³¹ purchases, and to support depreciation amounts and property asset balances. *See* AGLR, § 3.5.4(c) (explaining the key elements and criteria for property records).

The AGLR requires that certain information be maintained for fixed assets purchased in excess of \$5,000.00. *See Id.*, App VII, § C-1 (outlining the internal control checklist for property control). The records should contain the following information for each asset:

- a. The date the asset was acquired or donated;
- b. A description of the property item, including model and serial number;
- c. Cost and salvage value, if any, of asset and check number of disbursement;
- d. Identification of funds used to purchase asset;
- e. Depreciation lives assigned to asset; and
- f. Identification number and location of asset.

See Id.

Additionally, property control procedures also require that fixed assets be tagged for easy identification to the fixed asset records, that physical inventories be conducted at least once every two (2) years in order to determine the accuracy of the fixed asset records, and that any adjustments to the fixed asset records and the general ledger control accounts be reviewed and approved by employees who do not have responsibility for maintaining fixed-asset records. *See Id.*

i. Procedures and internal controls regarding property controls

According to TRLA's policy, a fixed asset is any single item of property or equipment obtained through purchase or donation valued at \$1,000.00 or greater.³² For these types of assets, TRLA's policy requires that accurate property records are maintained for all fixed assets and equipment by conducting a physical inventory at least once every two (2) years. *See Id.*, App VII, § C-4 (internal control checklist inquiring as to whether physical inventories are conducted at least once every two (2) years).

According to TRLA's accounting policies and procedures manual, information such as the asset number, the asset's description, the name of vendor, the asset's location, the check number, the purchase or acquisition date, the serial number, and other relevant information like applicable warranties and maintenance agreements are entered into the inventory database along with the appropriate depreciation schedule.³³ The policy also indicated that a metal property

³¹ A fixed asset is property that is not easily convertible to cash; *i.e.* computer, desk.

³² The monetary threshold value of fixed assets used by TRLA is more stringent than the threshold value proscribed by the AGLR.

³³ According to the policy, the depreciation schedule is five (5) years for computer equipment and 10 years for all other types of equipment.

identification tag is affixed to all equipment. The metal tag has TRLA's name and the notation "LSC-grant number-property number."

In preparation for the physical inventory, the Chief Financial Officer stated that a record of all fixed assets is printed with the location of each asset. During the inventory process, notations are made with regard to change of location, loss, theft, or obsolescence. These notations are then entered into the inventory database and the property and equipment fund balance is reduced by the appropriate amount. TRLA's accounting policies and procedures manual indicated that the valuation totals must reconcile to the fixed assets total in the general ledger and that the true value of the asset after depreciation has to be recorded. A copy of the annual property and equipment inventory is maintained as a part of TRLA's financial records.

ii. On-site testing

The on-site review of TRLA's inventory database and the completed "Internal Control Worksheet" (as completed by TRLA) evidenced an adequate segregation of duties in recording the acquisition date, item description, cost value (no salvage values assigned), depreciation lives, identification number, and asset location for each listed fixed asset. According to TRLA's accounting policies and procedures manual, fixed assets records are balanced to the general ledger control accounts at least once a year. According to the property and equipment inventory record, the most recent physical inventory was conducted two (2) years ago.³⁴ A review of certain fixed assets located at the Weslaco office evidenced that the assets were tagged with an identification number and the fixed assets purchased with LSC funds were identified as such. *See* AGLR, App VII, § C-4 (requiring that fixed assets are tagged for easy identification). However, the property and equipment inventory record and paid invoices evidenced that TRLA used LSC's funds to purchase computer equipment exceeding \$10,000.00 without requesting LSC's prior approval (this will be discussed in more detail in Finding No. 4).

Review of TRLA's policy and supporting documentation indicate compliance with AGLR, App VII, § C. TRLA has adequate documentation that accurately accounts for and records all of its fixed assets. Interviews with the Chief Financial Officer demonstrated an understanding of the importance of maintaining accurate property records and the segregation of duties as outlined above aid in preventing fraud or unauthorized use. Therefore, there are no recommendations or required corrective actions regarding TRLA's property control procedures.

Finding 4: The on-site review evidenced that TRLA's written policies and procedures regarding procurements can prevent unauthorized or fraudulent expenditures and/or duplicative payments. However, TRLA must establish written procurement procedures consistent with 45 CFR Part 1630 and the PAMM §§ 3 and 4.

A Recipient's procurement system and procedures should be designed to provide reasonable assurance that: a clear line of authority for approving purchases exists; cost considerations have been evaluated; budget appropriations have been verified; procedures are in place to prevent and detect fraud, waste, and abuse; and revenues; and expenditures applicable to the operations are

³⁴ The date on the property and equipment inventory record reviewed was August 24, 2010.

recorded and accounted for properly so that accounts and reliable financial reports may be prepared and accountability of the assets may be maintained. A Recipient's procurement process should be administered in a manner that requires the approval to purchase goods or services to be authorized by personnel other than the employee requesting the purchase; the approval to purchase should also be segregated from the receiving of goods and services; that adequate supporting documentation is maintained for each transaction; and accurate financial records are maintained for all procurement activities. A weakness in this area may result in unauthorized or fraudulent expenditures and/or duplication in payments. *See* AGLR, § 3-5.4(a).

The AGLR requires that controls over procurements include prior approval authorization for procurement activities. *See* *Id.*, App VII, § D (outlining the internal control checklist for procurement). The procurement system must incorporate the following elements and/or practices:

1. Procedures for the solicitation of prices for purchasing, renting, and/or leasing fixed assets;
2. Procedures that allow for the consideration as to the cost advantages of buying versus renting equipment and other nonexpendable property;
3. The use of an approved vendor lists for recurring purchases;
4. Invoices, purchase orders and receiving documents compared and accounted for by a person not having any other purchase or receiving functions;
5. Request prior approval from LSC for purchases with LSC funds of real property, purchases or leases of personal property with a value of over \$10,000.00 and capital expenditures of more than \$10,000.00 to improve real property; and
6. Procedures for the solicitation of proposals or bids prior to entering into a contract that exceeds a specific dollar amount are consistent with LSC's PAMM.

See AGLR, App VII, § D (for complete list of elements)

i. Procedures and internal controls regarding procurement

According to TRLA's existing policy, TRLA should lease equipment whenever the charges over a three (3) year period would amount to at least 10 % or less than the purchase price.³⁵ This comports with LSC guidance. *See* AGLR, App VII, § D-3 (internal control checklist inquiring as to whether procedures provide consideration to the cost advantages of buying versus renting equipment and other nonexpendable property). Also, two (2) or more competitive bids must be sought for any purchase of \$1,000.00 or more.³⁶ *See* AGLR, App VII, § D-2 (internal control checklist inquiring as to whether solicitation of prices for purchase, rent, and/or lease of fixed assets); *also see* AGLR, App VII, § D-11 (internal control checklist inquiring as to whether

³⁵ For instance if purchasing a copier would cost \$1,000.00, but the total charges to lease over a three (3) year period total \$990.00.

³⁶ PAMM states that purchases of individual items over \$10,000.00 when LSC funds are used require prior approval and that recipients are required to consider competitive quotes from at least three (3) potential sources for the property.

procedures provide for the solicitation of proposals or bids prior to entering into a contact that exceeds a specified dollar amount).

However, the policy does not outline the required procedures for acquisitions made with LSC funds of real property, purchases or leases of personal property with a value exceeding \$10,000.00, and capital expenditures of more than \$10,000.00 to improve real property. *See* 45 CFR § 1630.5 (explaining that certain costs require LSC prior approval); *also see* PAMM §§ 3 and 4; and AGLR, App VII, § D-7. Nonetheless, it appears that TRLA is aware of LSC requirements as demonstrated by its prior history: in August 15, 2008, TRLA requested LSC prior approval to purchase a Voiceover Internet Protocol telephone system for the Eagle Pass branch office in the amount of \$16,721.00; the approval was granted August 18, 2008 and was valid for one (1) year. In addition, TRLA has submitted prior approval requests dating as far back as 1997. As a result of TRLA's lack of written policy in this area, the Draft Report required TRLA to establish acquisition policies and procedures that ensure required LSC prior approvals are obtained in accordance 45 CFR § 1630.5 and the PAMM §§ 3 and 4 and include copies of same as attachments to its response to the Draft Report. In its response to the Draft Report, TRA indicated that its Property Acquisition Policy was approved by its Board of Directors on June 8, 2013. In addition, procedures for ensuring required approvals have been added to its Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE's review of the Board approved policy provided, required corrective action no. 7 is closed.

TRLA's purchase acquisition process consists of independent checks and proofs where no individual staff person is solely responsible for handling all phases of the procurement process. TRLA's accounting policies and procedures manual indicates that a purchase requisition form is required for all orders totaling over \$100.00 or for single items costing more than \$50.00.³⁷ Purchase requisition forms are accepted on the 1st and 15th of the month.³⁸ The purchase requisition form undergoes a two (2) step approval process. First it is approved by the office's Branch Manager and then a copy is submitted to the Account Operations Manager in the Weslaco office for additional review or to the Chief Financial Officer for orders equal to or in excess of \$1,000.00. *See* AGLR, App VII, § D-6 (requiring appropriate authorization be obtained prior to the purchase, rent, or lease of equipment and supplies). Once reviewed and approved by the Chief Financial Officer the purchase requisition form is assigned a pre-numbered purchase order by the Assistant Director of Finance. This purchase order is then maintained and filed in numerical order by the accounting office.³⁹ *See* AGLR, App VII, § D-6 (requiring pre-numbered purchase orders). A pink copy is maintained in the vendor account file in the current financial record and a gold copy of the purchase order is sent to the individual branch office that will then place the order and receive the good(s).⁴⁰

³⁷ There is an employee in each office responsible for ensuring that supplies are in stock and ordering supplies as necessary. Arrangements have been made with Corporate Express for special pricing for purchase of high-volume office supplies such as reams of paper.

³⁸ If the 1st or the 15th fall on a Saturday or Sunday then requisition forms are accepted the following business day.

³⁹ Purchase order numbers are assigned within 72 hours of the date indicated.

⁴⁰ However, according to the policy, in cases where the vendor is Corporate Express, Ocana's Printing, Upper Valley Press, or Deluxe Business Checks and Solutions, a purchase order will be e-mailed to the Risk/Materials Manager to place the order.

As property and equipment are received, they must be checked against the invoice, the original purchase requisition, and the gold copy of the purchase order. The secretary in each office is charged with verification of the order and indicates approval by initialing and dating the invoice and signing the gold copy of the purchase order. The invoice, the original purchase requisition form, and the signed gold copy of the purchase order are then mailed to the accounting department in Weslaco to be reviewed by either of the two (2) Accountants. Any discrepancies must be reported to the Chief Financial Officer immediately so the supplier may be contacted and appropriate credit notations made.

ii. On-site testing

The on-site review consisted of testing a sample of six (6) asset purchases that were each in excess of \$1,000.00 for the fiscal years 2010 and 2011, and the nine (9) months of fiscal year 2012.⁴¹ The samples were tested to ensure compliance with TRLA's internal procurement policies. The sampling evidenced that: the requisitions were supported with the proper and necessary approvals; at least two (2) competitive bids were obtained for each asset purchase; the purchase orders were properly approved and timely generated; the vouchering of the purchases for payment consisted of matching the price and quantities of receiving reports to purchase orders and vendor invoices (in order to ensure the mathematical accuracy of the vendor invoice) by an employee independent of purchasing and receiving evidenced by the "Internal Control Worksheet (as completed by TRLA)"; and the accounting distribution was proper. *See* AGLR, App VII, § D-8 (internal control checklist inquiring as to whether purchase orders and invoices are compared and accounted for by a person not having any other purchase or receiving functions).

Interviews with the Chief Financial Officer, as well as policy review and the on-site testing, evidenced that TRLA's procurement procedures comply with AGLR, App VII, § D-2-4, 6, 8, and 11 (internal control checklist inquiring as to whether solicitation of prices for the purchase of fixed assets; requiring internal procedures provide consideration to the cost advantages of buying versus renting equipment and other nonexpendable property; requiring use of approved vendor lists; requiring that purchase orders and invoices are compared and accounted for by a person not having any other purchase or receiving functions; and requiring solicitation of proposals or bids prior to entering a contact exceeding a specific dollar amount). However, two (2) exceptions were noted.

In the first instance, an invoice evidenced a payment posted July 29, 2010 to a vendor in the amount of \$11,635.05 (for hardware, software licensing, and freight) charged to the LSC fund account. The supporting documentation consisted of purchase order no. 7168 received by TRLA on July 23, 2010. According to the corresponding fixed asset inventory tagged list and the account distribution summary the following purchased items were charged to the LSC fund account:

1. Publisher Server in the amount of \$3,878.35;
2. Subscriber Server in the amount of \$3,878.35; and
3. Server in the amount of \$3,878.35.

⁴¹ Two (2) asset purchases were reviewed for each fiscal year.

The Draft Report directed that, pursuant to the PAMM § 3, TRLA should provide documentation demonstrating that prior approval was obtained for this acquisition or provide documentation demonstrating that the noted costs were not charged to the LSC fund account. In addition, TRLA, pursuant to the PAMM § 3, should establish acquisition policies and procedures that ensure required LSC approvals are obtained before making certain purchases. In its response to the Draft Report, TRLA indicated the purchase of the three (3) items was for the improvement of its existing voice and data transmission systems. Although the items were purchased from the same vendor on the same day, TRLA's understanding of LSC's regulation and PAMM is that separate items should not be aggregated for purposes of determining whether LSC permission is needed. Prior authorization from LSC was not sought because two (2) related items were less than the \$10,000.00 threshold under 1630.5, as was the unrelated third item. Each item could have been purchased from a different vendor on a different occasion. Each item was an independent, unrelated improvement to the program's VoIP telephone system or its data transmission systems. The upgrades in 2010 were for a Cisco Call Manager Subscriber and Publisher, and a Cisco Unified Communication Express unit. The Subscriber and Publisher should be treated as related items, each costing \$3,878.35, with a combined price of \$7,756.70. These two (2) components control all voice and mail communications, including paging and toll bypass on over 200 phone sets in 12 branch offices. The Cisco Unified Communication Express unit directs calls within the centralized telephone intake system, the Telephone Access to Justice ("TAJ") hotline system. It is a stand-alone system, not related to, or a component of, the general telephone system among the branch offices. The Express unit also cost less than \$10,000.00. In TRLA's opinion, the "prior approval" requirement on this matter was not violated because § 1630.5(b)(2) states, "Purchases and leases of equipment, furniture, or other personal non-expendable property, if the purchase price of any individual item or property exceeds \$10,000.00;" (emphasis added). Additionally, the PAMM states in § 3 "Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over \$10,000.00, but not for aggregate acquisitions of over \$10,000.00." There were two (2) related components purchased for a combined price that was less than \$10,000.00 and one unrelated component that also was less than \$10,000.00. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 8 is closed.

Secondly, in a sampling consisting of IRS Form-1099s regarding miscellaneous income that exceeded \$25,000.00 and corresponding vendor history payments, it was determined that TRLA issued a vendor payment in the amount of \$28,500.00 in 2010 for a construction project.⁴² The project involved replacing the carpeting and re-painting the walls of a branch office that had sustained storm damage. The on-site review evidenced that the payments were spread out over 44 days, and the distribution of payments consisted of \$23,000.00 paid in fiscal year 2010 and \$5,500.00 paid in fiscal year 2011. Because this expenditure for capital improvement exceeded \$10,000.00, LSC prior approval was required pursuant to 45 CFR § 1630.5(b)(4) and PAMM § 4(f). Pursuant to PAMM § 4(f), TRLA was asked to provide documentation that LSC prior approval was obtained for this expenditure, or documentation demonstrating that this expenditure was not a capital improvement as defined by the PAMM § 2(c), or that the amount exceeding \$10,000.00 was not charged to the LSC fund account. In its response to the Draft Report, TRLA

⁴² The review period was from January 1, 2010 through August 9, 2012.

indicated that Hurricane Alex in June 2010 and a series of subsequent thunderstorms in the Coastal Bend area of Texas caused extensive flooding to TRLA offices in Corpus Christi and Sinton. TRLA entered into an agreement with Caleb Construction in July of that year to reseal and repair an external wall in the Corpus Christi Pueblo Street office for a total price of \$10,014.00, and also retained the same firm to make flooding repairs to the Sinton office in San Patricio County for \$2,986.00. TRLA inadvertently failed to seek approval for the repairs to the Corpus office, which exceeded the threshold under 45 CFR § 1630.5(b)(4) by \$14.00. TRLA did not believe that it was necessary to seek LSC approval for the separate repairs to the Sinton office, which were substantially under \$10,000.00.

Subsequently, TRLA determined that the flooding had caused additional and previously undetected damage to the Corpus Christi office. The moisture in the carpet and flooring was creating the growth of mold, and it was necessary to contract with Caleb again to remove and replace the carpet and to make additional flooring repairs. TRLA agreed to the submitted proposal for \$15,500.00 on September 21, 2010, and made the payment to the construction company on October 7, 2010. TRLA indicated that it unintentionally failed to submit a request to LSC for prior approval for this expenditure and will reimburse the LSC account for the \$5,500.00 in excess of the threshold. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 9 will remain open, pending a transfer from TRLA's non-LSC funds to LSC funds in the amount of \$5,500.00. TRLA is directed to provide documentation of this transfer, to OCE, within 30 days of the release of this Final Report.

Finding 5: Based on the on-site review, TRLA is in compliance with 45 CFR Part 1614 (Private Attorney Involvement) in that it has devoted an amount equal to at least 12.5% of its basic field award to the involvement of private attorneys in the delivery of legal services. However, TRLA must fully document its Private Attorney Involvement ("PAI") methodology for indirect costs as required by 45 CFR § 1614.3(e)(1)(i).

LSC regulations require Recipients to devote an amount of LSC and/or non-LSC funds equal to twelve and one-half percent (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.

TRLA's PAI efforts

TRLA involves private attorneys in the delivery of legal assistance to eligible clients through the "Private Attorney Involvement Program" whereby the participating attorneys sign a two (2) page "Private Attorney Contract."⁴³ The hourly rate of compensation for PAI attorneys changed on April 1, 2010 from \$50.00 per hour to \$75.00 per hour. While TRLA does not appear to have recently engaged in a survey of prevailing market rates for attorneys, the Pro-Bono Coordinator stated in a telephone interview that the hourly rate for attorneys in the valley (referring to the South Texas/Mexico area) ranged from \$150.00 to \$200.00; whereas the hourly wage tended to be much higher in the urban areas like San Antonio and El Paso. Therefore, TRLA's hourly compensation for its PAI attorneys complies with 45 CFR § 1614.3(e)(3) (requiring that attorneys' fees may not exceed 50% of the local prevailing market rate for that type of service).

According to TRLA's Audited Financial Statement for fiscal year 2011, PAI expenditures were reported separately as required by 45 CFR § 1614.3(e)(2). The "Statement of Revenues and Expenses of Private Attorney Involvement Commitment" evidenced that TRLA expended a total of 14.21% (\$1,631,250) of its Basic Field-General grant award.⁴⁴ A review of a spreadsheet outlining PAI common costs, its non-personnel costs, and non-attorney and non-paralegal costs, as well as discussions with the Chief Financial Officer and the Director of Human Resources, indicate that TRLA's cost allocation methodology for these types of costs are allocated based on reasonable operating data as required by 45 CFR § 1614.3(e)(1)(i). However, though TRLA was able to articulate its allocation methodology and provide supporting documentation, the actual methodology was not clearly documented as required by 45 CFR § 1614.3(e)(1)(i). In its response to the Draft Report, TRLA indicated that its PAI methodology calculation had been added to its Accounting Policies and Procedures Manual and provided a copy of the manual as evidence. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 10 is closed.

Finding 6: From a limited review of sampled PAI contracts certain issues regarding segregation of duties, improper approval authorizations, and inaccurate contractual terms were noted.

A Recipient's contract system and procedures should be designed to provide reasonable assurance that a clear line of authority for approving contracts exist, that cost considerations have

⁴³ See Finding No. 6 for a detailed discussion regarding PAI contracts in relation to internal control measures, the OIG Recommendation etc.

⁴⁴ For fiscal year 2011 TRLA was awarded a Basic Field-General grant in the amount of \$11,480,342.00.

been evaluated, that budget appropriations have been verified, and that procedures are in place to prevent and detect fraud, waste, and abuse. A Recipient's contract process should be administered to include the creation, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk. The management of the contract should include: negotiating of contracts terms and conditions; ensuring compliance with the terms and conditions; and documenting and agreeing on any changes or amendments that may arise during its implementation or execution. A weakness in this area may result in fraud, waste or abuse. *See* AGLR, § 3-5.16.

Additionally, LSC's accounting guidelines address the need for Recipients to have adequate procedures in place to ensure that the governing body (or other authority) and all necessary funding source approvals are obtained prior to entering into contracts; contracts are written so that services to be rendered are clearly defined, properly signed by authorized persons, and all contract terms and modifications have been complied with; contract costs should be monitored to certify that they have been incurred within the appropriate fiscal year and do not exceed budget authority; and modifications to an existing contract must be made in writing and future obligations adjusted to reflect the new contract. *See* AGLR, App VII, § E (outlining the internal control checklist for contracting with legal consultants and/or other service contracts).

While the AGLR recognizes that there are many types of contracts and that the Recipient should identify contracting procedures for the various types of contracts, dollar threshold amounts, and competition requirements, it indicates that consulting, personal services, and sole-source contracts should receive additional oversight. *See* *Id.*, § 3-5.16. Improper contracting procedures can result in waste of scarce funds and subject the grantee to questioned cost proceedings. *See* *Id.*

i. OIG issued Recommendation

At the conclusion of the OIG's audit on selected internal controls, the OIG recommended that TRLA develop written policies and procedures for contracts and consultant agreements that comply with the requirements of the AGLR.⁴⁵ While on-site, the OIG determined that TRLA's one (1) sentence requiring that "All contracts with consultants and other firms must have the signature of the Executive Director or the Director of Administration" was insufficient instruction to aid staff in complying with certain LSC requirements. According to the *Report*, TRLA provided a revision to the contracting policy which added the requirement that consulting contracts may be entered into only after determining there is a need and that existing staff cannot perform the task. However, even with the revision, the OIG determined TRLA's contracting policies to be insufficient. Specifically, TRLA was directed to fully develop procedures to:

1. Solicit proposals or bids prior to entering into a contract that exceeds a specific dollar amount;⁴⁶

⁴⁵ This is Recommendation No. 6 from Audit Report *No. AU 12-03*.

⁴⁶ This procedure was discussed in Finding No. 3 regarding TRLA's procurement process. According to TRLA's internal policies, two (2) or more competitive bids must be sought for any purchase of \$1,000.00 or more. *See* AGLR, App VII, § D-2 (requiring for solicitation of prices for purchase, rent, and/or lease of fixed assets).

2. Fully document contracting actions by maintaining the bids received and the approvals given for each purchase above a reasonable level;
3. Document justifications for sole source purchases above a specified dollar amount;
4. Ensure that the governing body and all necessary funding source approvals are obtained prior to entering into contracts;⁴⁷
5. Include clearly defining services to be rendered in the written contract; and
6. Document modifications to existing contracts.

See OIG Report, page 10.

During the course of the FIC review, the newly revised policy was reviewed and found to evidence all of the above referenced procedures (nos. 1-6) and incorporate the relevant portions of AGLR, App VII, §§ D (outlining the internal control checklist for the procurement process) and E (outlining the internal control checklist for contracting with legal consultants and/or other service contracts).⁴⁸

ii. Procedures and internal controls regarding legal consultants/contract services

According to TRLA's revised internal policies, with the exception of PAI contracts, all other contracts with consultants and other firms should have the signature of the Executive Director or his/her designee.⁴⁹ PAI contracts must be approved by the TRLA Executive Committee and/or the full Board of Directors.⁵⁰ Prior to entering into a contract and securing the services of an independent consultant, the revised policy requires:

⁴⁷This procedure was discussed in Finding No. 3 regarding TRLA's procurement process. According to TRLA's internal policies, after the purchase requisition form is approved by the office's Branch Manager, it is submitted to the Accounting Operations Manager in the Weslaco office for additional review; however orders equal to or in excess of \$1,000.00 requires the approval of the Chief Financial Officer (CFO). *See* AGLR, App VII, § D-6 (internal controls checklist inquiring whether appropriate authorization is obtained prior to the purchase, rent, or lease of equipment and supplies).

⁴⁸TRLA, in its response to the *Report* dated April 23, 2012, indicated that it would "... revise its policies in this area in accordance with the OIG recommendation." During the course of the FIC review, TRLA indicated the revised policy was adopted by its Board of Directors during the annual Board meeting held on September 22, 2012. In order to properly evaluate its compliance in this area and fairly assess the sampling for progress in light of the OIG Recommendation, TRLA was asked when it started implementing the revised policy. TRLA indicated that it has always followed LSC regulations in this area, but that its actions had not been memorialized in a written policy until its preparation for board approval on September 22, 2012. However, as noted by the OIG, not memorializing the procedures was insufficient because a Recipient that has an effective internal control structure will create policies that outline the procedures staff must consistently follow so that serious ethical, financial, and compliance breaches are reduced. *See* AGLR, §§ 3 and 4 (explaining the key elements in an internal control structure); also *See* AGLR, §§ 3, 4, and 5.1 (explaining that implicit unwritten delegations of authority and "understood" criteria often lead to misunderstandings and less than efficient operations).

⁴⁹*See* TRLA Policy III(f). This policy was formally adopted at the Board of Directors meeting that occurred September 22, 2012.

⁵⁰*See* TRLA Policy III(g). This policy was formally adopted at the Board of Directors meeting that occurred September 22, 2012.

1. A determination to be made that the services are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties;⁵¹
2. That the Executive Director or his designee approves all independent consultant agreements and subsequent amendments.⁵² *See* AGLR, App VII, § E-1;
3. That for any contract exceeding \$25,000.00 “Request for Qualifications” or “Request for Proposals” are solicited. *See* AGLR, App VII, § D-11;
4. Contracts with private attorneys under TRLA’s Private Attorney Involvement (“PAI”) program must be approved by TRLA’s Executive Committee and/or the full Board of Directors;
5. That the CFO ensures that all necessary funding source approvals are obtained. *See* AGLR, App VII, § E-2; and⁵³
6. That all contracts must have a definite period of time and services clearly described.⁵⁴ *See* AGLR, App VII, § E-2.

Prior to making any payments, the Accountant must review the contract to ensure that the contract limits are not exceeded and that the contract period is adhered to. Furthermore, any contract modifications must be in writing and designate any future obligations. *See* AGLR, App VII, § E-4 (requiring that modifications to an existing contract are made in writing and future obligations are adjusted to reflect the new contract). The revised procedures and controls provide reasonable assurance against fraud and/or waste in this area.

iii. On-site testing

The on-site review sampled only PAI contracts from October 1, 2010 through August 31, 2012. As PAI contracts have additional regulatory requirements that can trigger other regulations, these elements will be discussed as applicable and appropriate.⁵⁵ The sampling evidenced that all the contracts were approved by TRLA’s Executive Director;⁵⁶ 29 contracts were properly executed in that they were dated, were signed by authorized persons, stated the nature of the case work to be undertaken, indicated the correct hourly rate and the maximum allowable fees. *See* 45 CFR § 1614.3(e)(1)(ii) (requiring that Recipients maintain PAI contracts on file which set forth payment systems, hourly wages, and maximum allowable fees).

⁵¹ According to *Report No. AU 12-03*, page 10, TRLA made this revision while the OIG was on-site conducting its audit.

⁵² *See* TRLA Policy III(f). This policy was formally adopted at the Board of Directors meeting that occurred September 22, 2012.

⁵³ *See* TRLA Policy III(b). This policy was formally adopted at the Board of Directors meeting that occurred September 22, 2012.

⁵⁴ *See* TRLA Policy III c). This policy was formally adopted at the Board of Directors meeting that occurred September 22, 2012.

⁵⁵ Please refer to Finding No. 5 for a discussion regarding TRLA’s PAI efforts and cost allocation methodology.

⁵⁶ TRLA addressed this segregation of duty issue by implementing an internal control feature in its policy adopted by its Board of Directors September 22, 2012.

The remaining sampled contracts evidenced certain compliance/internal control issues:⁵⁷

a. Some sampled PAI contracts evidenced inaccurate information and/or were incorrectly executed.

In one (1) sampled contract, the contracting attorney did not date his/her signature line and the hourly rate was not amended on the contract itself. As noted previously, TRLA recently amended the hourly rate for PAI contracts from \$50.00 to \$75.00 per hour. A memorandum from the Director of Administration was apparently sent to all PAI contract attorneys informing them of the rate increase. It is unclear if the rate increase was intended to affect the maximum allowable fees as noted on the original PAI contract. *See* 45 CFR § 1614.3(e)(1)(ii) (requiring that Recipients maintain PAI contracts on file which among other things, set forth maximum allowable fees). In addition, as the rate increase constitutes a material change in the contractual terms (although a beneficial one), the better course of action may be to modify the individual contract by addendum or by notation on the contract itself with acknowledgment from both parties through initialing or signing. It is unclear why TRLA did not execute a “Contract Addendum” as it did for another PAI attorney. This deviation in practice may be an internal control weakness as internal controls are safeguards that should be consistently implemented in order to provide reasonable assurance against fraud or waste.

Moreover, sampling indicated that after the rate increase went into effect, five (5) contracts still noted the incorrect hourly rate of \$50.00 and, in addition to the incorrect hourly rate, one (1) contract seemed to have an inaccurate execution date of December 5, 2012. As the on-site review occurred the week of September 24, 2012, it seems that the execution date for this sampled contract was incorrect. These types of errors suggest that TRLA may need additional review procedures at the contract process stage in order to ensure that its PAI contracts contain accurate information *i.e.* fee compensation amount. As a result of these discrepancies, the Draft Report required TRLA to review all current PAI contracts for 2010 through 2013 for accuracy, *i.e.* ensure that the scope of the contract is clearly defined, properly executed by authorized persons and relevant parties, and all contract terms and modifications are notated on the contract with appropriate authorizations and/or that addendums are attached memorializing the modifications with appropriate authorizations. The Draft Report advised that, where TRLA finds contracts with inaccurate terms, it must take appropriate measures in accordance with its internal formal policies to correct the issues, *i.e.* draft an addendum to the contract with appropriate authorizations and include in its response to the Draft Report details regarding each issue(s) discovered (if any) and how the issue(s) was (were) remedied. In its response to the Draft Report, TRLA indicated all such contracts were reviewed and no issues were discovered. Based on TRLA’s response to this required corrective action, and OCE review of same, corrective action no. 11 is closed.

Also, the sampling revealed a PAI contract dated July 10, 2001 and signed by the contract attorney and TRLA’s Executive Director on the same day. Subsequently, an amended contract for this attorney was signed by the attorney on either April or September 15, 2008, however it became effective after January 1, 2008. Though the Executive Director’s signature is also on the document, the signature block is undated. In addition, the hourly rate on the amended contract

⁵⁷ While on-site a total of 155 PAI contracts were collected of which 35 was selected for review.

was \$60.00 per hour, while the hourly rate for all other PAI contract attorneys in 2008 was \$50.00 per hour. Discussions with TRLA indicated that this attorney worked on migrant cases, and was not a PAI attorney, and therefore the rate increase did not apply. As a result of these discrepancies, the Draft Report required TRLA to review the payments made to PAI attorneys from 2010 through 2013 to ensure that all payments were properly issued in accordance with the payment schedule that was in effect at the time the contract was executed and where issues were noted, take appropriate measures to correct the issue, *i.e.* in the case of underpayment, issue the amount owed and include in its response to the Draft Report details explaining the issue(s) discovered (if any) and how the issue(s) was remedied. In its response to the Draft Report, TRLA indicated all such contracts were reviewed and no issues were discovered. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 12 is closed.

According to those interviewed, this attorney, referred to as Oregon No.1, is considered a legal consultant for migrant cases and not a PAI attorney. Payments issued to this attorney, covering the period from January 1, 2010 through August 31, 2012, totaled \$19,754.91. According to a document titled "Re: Billing for services rendered" dated July 26, 2012, the consultant's mailing address is in Oregon and included billable time for things like "travel arrangements," "conversation with David re: TRLA changes," and "email from X re: NLADA training planning." These costs were not cross-referenced to a case or client. As a result of these issues, the Draft Report required TRLA to assess or determine to what extent if any, the noted issues in this Finding alter its PAI requirement for fiscal year 2011, and to include in its response to the Draft Report the revised amount or a statement indicating that the amount is unchanged, as well as, to review all active agreements for legal consultants to ensure that said agreements are correctly memorialized and that the agreements contain accurate terms with appropriate authorizations. The Draft Report directed that, where TRLA finds agreements with inaccurate terms and/or improper authorizations, it must take appropriate measures in accordance with its internal policies to correct the issues and include in its response to the Draft Report details explaining the issue(s) discovered and how the issue(s) was remedied. In its response to the Draft Report, TRLA indicated that no issues were discovered. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 13 and 14 are closed.

It is unclear why a legal consultant would have the same contract as a PAI attorney and though this procedure was established by TRLA during the course of the OIG's audit, it is unclear whether a determination (formal or informal) was made that these services are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties.⁵⁸ As a result of these issues, the Draft Report required TRLA to include for each consultant agreement entered into after September 30, 2012, a statement confirming that a determination has been made that these services are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, who is responsible for making this determination and how such a determination will be reached, as well as, a properly executed contract for this individual and, in

⁵⁸ According to Report No. AU 12-03, page 10, TRLA made a revision to their contracts and consulting agreements policy while the OIG was on-site conducting its audit, that requires consultant contracts be entered into only after determining there is a need and that existing staff cannot perform the task.

accordance with its internal policies, include a determination that the services offered are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, indicating who made this determination and how this determination was made. In its response to the Draft Report, TRLA indicated that no new consultant agreements had been entered into in fiscal year 2013 as of June. TRLA further explained that the legal consultant in question is an experienced and respected attorney in the practice of law for migrant and seasonal farm workers. TRLA provided argument that the consultant's work with TRLA was invaluable and could not be performed by existing staff, especially his advice and counsel on matters of migrant legal services delivery systems., . TRLA argued that there was no one on staff with comparable experience and litigation talents who could perform such an advanced level of services for the program. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 15 and 16 are closed.

- b. As noted above, TRLA's previous approval procedures for its PAI contracts did not appear to have adequate segregation of duties during the contract approval phase. The new policy appears to contain adequate segregation of duties, but was not tested during the on-site review.**

Segregation of duties is an important component in establishing effective internal controls. Accounting duties should be segregated such that no one individual is responsible for all phases of any accounting process. *See* AGLR, § 3-4, no. 3 (explaining that duties must be segregated so that no individual can initiate, execute, and record a transaction without a second independent individual being involved in the process). TRLA's revised policy requires that PAI contracts be approved by the Executive Committee and/or the full Board of Directors.⁵⁹ As this internal control feature was just adopted on September 22, 2012, the sampling could not determine TRLA's implementation of this newly established process.

- c. A sampled PAI contract noted maximum allowable fees in excess of the \$25,000.00 threshold.**

Pursuant to 45 CFR § 1614.3(e)(1)(ii), a PAI contract must include the maximum allowable fees. The sampling evidenced a contract titled "Private Attorney Contract" with a series of "Contract Amendments" for the same attorney, referred to as Oregon No. 2. All documents, the original contract with its four (4) amendments, were signed by TRLA's Executive Director and the contract attorney but not dated. As a result of the missing dates and the overlapping effective dates, it is difficult to ascertain which Amendment is current, for example:

Private Attorney Contract for the period of November 1, 2009 through October 31, 2010. The maximum allowable fees were \$20,000.00 with an hourly rate of \$50.00;

Contract Amendment effective from May 1, 2010 until December 31, 2010. The Amendment increases the amounts in the original

⁵⁹ *See* TRLA Policy, III(g). This policy was adopted on September 22, 2012.

contact by \$20,500.00 in fees and \$4,000.00 in expenses. The date next to the attorney's signature is September 30, 2010;

Contract Amendment effective from July 1, 2011 until December 31, 2011. The Amendment increases the amounts in the original contact by \$20,500.00 in fees;

Contract Amendment effective from October 1, 2010 until December 31, 2012. The Amendment increases the amounts in the original contact by \$20,500.00 in fees and \$4,000.00 in expenses; and

Contract Amendment effective from December 1, 2011 until December 31, 2012. The Amendment increases the amounts in the original contact by \$20,500.00 and \$40,000.00 in fees and \$4,000.00 in expenses.

In addition, it is unclear if the current Amendment supersedes the previous Amendments, so that at any given time, the maximum allowable amount in fees is \$40,500.00, or if each Amendment builds upon the previous one, so that at any given time, the maximum allowable amount in fees is approximately \$102,000.00. Furthermore, it seems that based on this attorney's submitted invoices that he/she resides in Oregon. A review of a list of charges, presumably submitted by this attorney, titled "September expenses" evidenced charges totaling \$731.76 which included a plane ticket to an October task force meeting in the amount of \$392.80.

According to IRS Form 1099 regarding miscellaneous income over \$25,000.00, it was determined that TRLA issued payments to this PAI contract attorney in the following amounts:

In calendar year 2010 a total of \$51,853.62;
In calendar year 2011 a total of \$36,563.36; and
In calendar year 2012 a total of \$53,950.30.⁶⁰

However, because TRLA's accounting period is on a fiscal year basis, TRLA was asked to provide a schedule of all vendor payments made to this contract attorney, as well as general journal entries recording these transactions in order to capture an accurate total amount of payments issued per fiscal year.⁶¹ The schedule of vendor payments indicated that this contract attorney was paid, in fiscal year 2010, a total of \$43,867.77 with LSC funds and in fiscal year 2012 a total of \$46,858.34, for a combined total of \$90,726.11.⁶² Based on the documents demonstrating payments issued in excess of \$25,000.00 for a fee for service arrangement,

⁶⁰ During the course of this review IRS Form 1099 for miscellaneous income was reviewed covering the period from January 1, 2009 through December 31, 2011.

⁶¹ TRLA's financial records are maintained on a fiscal year basis and its accounting period runs from October 1 through September 30. The IRS Form 1099 reports miscellaneous income on a calendar year January through December.

⁶² Subsequent to the on-site visit, additional detailed general ledger information for this contract attorney, covering the period of October 1, 2007 through September 30, 2009 was obtained from TRLA. Documentation evidenced that this contract attorney was paid \$0 in fiscal year 2008 and \$3,388.67 in fiscal year 2009, and as for fiscal year 2011, the contract attorney was paid exclusively with IOLTA funds.

whereby said attorney agreed to provide professional services to clients, it appears that this attorney may be a subrecipient as defined by 45 CFR § 1627.2(b).

Therefore, the Draft Report directed TRLA to submit all relevant documentation establishing either:

1. This fee for service arrangement is not a subgrant as defined by § 1627.2(b);
or
2. That LSC did approve this subgrant pursuant to § 1627.3(b); or
3. That LSC did not respond to the request for approval within 45 days and that LSC was notified of said failure and did not respond within seven (7) days of the receipt of such notification.

Additionally, the Draft Report required TRLA to submit all relevant documentation establishing the fee for service arrangement where total issued payments to Oregon based attorney No. 2 were in excess of \$25,000.00. In its response to the Draft Report, TRLA indicated that for fiscal year 2010 (October 1, 2009 – September 30, 2010) payments issued to Oregon based attorney No. 2 in the amount of \$43, 867.77 do not constitute a subgrant as defined by 45 CFR § 1627.2 (b) because TRLA charged only \$25,000.00 to LSC. TRLA provided documentation showing a journal entry, number 990, dated September 30, 2010, in the amount of \$18,867.77 that was entered and reclassified to another funding source. As for fiscal year 2012, TRLA provided documentation showing a transfer back to the LSC fund, all monies exceeding \$25,000.00, relating to the fee for service contract for payments issued to Oregon based attorney No. 2. According to TRLA, an adjusting entry for \$28,041.22 will be entered into TRLA's general ledger for the month of June 2013. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 17 is partially closed. TRLA is required to submit, within 30 days to issuance of this Final Report, evidence of this adjusting entry.

In the Draft Report, it was recommended that TRLA conduct an internal risk assessment in order to identify areas in its PAI contract process that require additional internal controls, *i.e.* ensuring that all contract modifications are memorialized in an Addendum signed by the required parties and reviewed by staff for irregularities; periodically conducting a review of all active PAI contracts by staff members who take no part in the approval process; and implementing an automatic Board of Director review through the Audit Committee once payments issued to a vendor, consultant, or PAI attorney reach a threshold amount. TRLA provided no response to this recommendation.

Finding 7: From a limited review of TRLA's internal controls over travel, it appears that TRLA's policy does not include a provision for retaining copies of records documenting prior approval authorization and the sampling evidenced no procedures in place that would mitigate the resulting risk of unauthorized travel.

In order to maintain effective internal controls, Recipients should have formal written travel policies for employees traveling on behalf of the organization. For example, the policy should outline procedures that:

1. Require prior approval for travel;
2. Require adequate supporting documentation for all reimbursed expenses;
3. Require preparation of trip reports for out-of-town travel that document the reasons and/or results of the trip; and
4. Require a formal review of all supporting documentation prior to travel reimbursements are issued.

See AGLR, App VII, §§ F-1-2, 4, 6

i. OIG issued Recommendation

As stated previously, the OIG conducted an audit on selected internal controls for TRLA. According to the *Report*, TRLA could not provide documentation of supervisory authorization prior to employees embarking on out-of-town travel as required by the existing written travel policy. TRLA explained that the employee's immediate supervisor provides approval via email and that the emails are not printed because TRLA is moving towards an electronic system of documentation and payment. The OIG determined that even though TRLA indicated that prior approval is by email, a system had not been designed to ensure that all out-of-town travel approval is retained, either electronically or in hardcopy. As a result, the OIG recommended that the Executive Director take action to ensure compliance with its policy on documenting supervisory approval prior to employees embarking on out-of-town travel. In response to the Recommendation, TRLA indicated that it would revise the policy to require prior written approval for out-of-town travel. It seems from the *Report* that TRLA's existing policy stated that prior approval is required for travel. Therefore, the issue, according to the *Report*, seems to be that staff did not retain records evidencing this authorization.

ii. Procedures and internal controls regarding travel

The on-site review of TRLA's revised travel policy confirmed that it contains a provision requiring that all out-of-town travel and local travel be approved in advance in writing by the employee's primary supervisor.⁶³ TRLA's policy regarding travel for its employees is compliant with AGLR, VII, § F in that: travel requires prior approval; adequate and supporting documentation must be reviewed prior to travel expenses are reimbursed; TRLA has developed adequate controls over accounting for advances and reimbursements for travel expenses; trip reports are required to be prepared for out-of-town travel; and the accounting office is required to review prior payments in order to avoid duplicate payments for the same expense. However, a provision that would require staff to maintain records documenting prior approval authorization was missing. As a result of TRLA's lack of written policy in this area, the Draft Report required TRLA to establish procedures that retain/maintain records documenting prior written approval for local and out-of-town travel for all staff and include as an attachment documentation evidencing same in its comments to the Draft Report. In its response to the Draft Report, TRLA provided documentation indicating that procedures requiring prior written approval being added to the Accounting and Procedures manual. Based on TRLA's response to this required

⁶³ TRLA's policy defines out-of-town travel as travel that takes the employee 100 miles or more from his/her house for 10 hours or more. Travel and per diem pay are paid to all persons traveling out-of-town on authorized TRLA business. See TRLA's Employee Handbook § IV Employment Benefits, Part D, no. 4.

corrective action, and OCE review of same, corrective action no. 18 is closed.

iii. On-site testing

The on-site review sampled six (6) attorneys that had out-of-town travel, local travel, or mileage reimbursements as evidenced by the reviewed expense reports. For fiscal years 2010, 2011, and nine (9) months of 2012, a total of 124 expense reports disclosed that they were signed by the appropriate employees, the proper receipts attached, and reports were mathematically correct with proper account distributions. However, there were deficiencies in the employee expense reports in the approval process for out-of-town travel. As previously stated, TRLA revised its travel policy to require a system to document prior written approval by an employee's supervisor for out-of-town travel, as recommended by LSC's OIG.

In the Draft Report, it was recommended that TRLA ensure staff compliance with this procedure by conducting staff training that would, at minimum, confirm the importance of why prior written approval for travel must be obtained, explain why the written authorization should be retained, and how it should be maintained. TRLA provided no response to this recommendation.

Finding 8: The on-site review evidenced a lack of a supporting documentation in the sampled credit card disbursements. In addition, while TRLA has formal written policies regarding cash disbursements in the form of checks, policy review evidenced no formal written policies for cash disbursements in the form of credit or charge cards or as electronic payments.

Cash disbursements is any cash outflow or payment of money to settle obligations such as operating expenses, during a particular period in order to carry out business activities. LSC's accounting guidelines regarding cash disbursements focus on the variety of ways disbursement transactions are processed utilizing today's current technology. In addition to traditional checks, other cash disbursement methods are now used that accomplish the same end results. Some of those methods are as follows: automatic and recurring bank withdrawals; telephone transfers; online bill pay options; internet/web-based initiated transactions; wire transfers (such as inter account transfers); and credit/debit card payments. Whatever the method used, LSC's guidelines suggest that the Recipient at minimum, establish:

1. Which disbursement methods are allowed;
2. Who is authorized to initiate them;
3. What documentation needs to accompany the disbursements; and
4. Which independent employees will review the supporting documentation.

See AGLR, App VII, § G (outlining the internal control checklist for controls over cash disbursements).

Moreover, it is recommended that independent, authorized signors log into the program's bank account(s) on a regular basis to review the disbursements used to withdraw cash; when disbursements (except payroll) are presented to authorize signors for review, they include the

supporting vouchers and invoice; there be appropriate controls to ensure that payments are made only for allowable items of costs, as defined by the terms of respective contracts and grants; written accounting policies and procedures be established to describe the accounting system and ensure that similar transactions are processed consistently; appropriate systems for filing checks be in place for check copies, non-check disbursements, and supporting documents; and supporting documents be marked 'paid' or otherwise canceled to prevent duplicate payment. See AGLR, App VII, § G (nos.2-7).

i. Procedures and internal controls regarding cash disbursements

a. Cash disbursements (checks)

According to TRLA's accounting policy manual, invoices that are paid with checks must be:

1. Re-added or multiplied to verify accuracy in its footings;
2. Maintained in alphabetical file until it is prepared for approval of payment; and
3. Checked for accuracy by the accountant.

The accounts payable accountant enters the vendor number, amount of check, date, and accounting codes based on type of expense, location, and fund source. An account approval form is generated by the computerized general ledger accounts payable program and the approval forms are then forwarded to the Assistant Director of Finance and Chief Financial Officer for approval. The Director of Administration reviews the invoices and signs his or her approval for the issuance of check or direct deposit. The Chief Financial Officer gives approval to the Accounting Operations Manager for the upload of direct deposits through the website to the bank. After the upload has been made, the accounts payable accountant sends an e-mail with the direct deposit information to each vendor and then prints out two (2) checks (the actual check and a check copy) from the accounting system. The accounts payable accountant separates the check from the copy and gives the actual checks to a second accountant. The second accountant along with the Chief Financial Officer, using the check signer software program, prints signatures on the checks. The clerk/messenger staples the check copies to the corresponding invoice or statement, at which time the invoice is stamped "PAID."

While on-site, a sampling of 15 cash disbursement transactions was examined for proper authorizations and adequate supporting documentation for the review period of January 1, 2010 through July 30, 2012. The sample consisted of 13 paper check transactions and two (2) electronic transactions that included reviewing the voucher packages for approval of the disbursement and proper account distribution.⁶⁴ The sampling evidenced no deficiencies.

b. Cash disbursements -- credit cards

As previously explained, cash disbursements may consist of payments in the form of checks, electronic transactions and/or charge/credit cards. While TRLA, as described above, has a written policy for payments issued by checks, a review of its accounting policy did not evidence

⁶⁴ A voucher package is all the supporting documentation that should be present for an invoice that is properly paid, i.e. requisitions, purchase orders and invoices.

a written policy for charge/credit card disbursements. An adequate internal control structure will have written policies that describe the specific procedures to be followed by the Recipient in reducing the risks of serious ethical, financial and compliance breached. *See* AGLR, § 3-4; *also see* § 3-5.

While on-site, a sampling of 31 targeted charge card statements were reviewed for fiscal abnormalities.⁶⁵ The deficiencies noted in the sampling were consistent to the deficiencies noted by the OIG during its audit.⁶⁶ For example, a review of the Executive Director's American Express ("AmEx") charge card statements evidenced that the statements did not include supporting documentation, *i.e.* vendor receipts. Without adequate supporting documentation, it is not always possible for the reviewer to determine if the charges are allowable under LSC regulations. Additionally, TRLA's policies and procedures require that receipts for business expenses be attached to document the charges. As a result of these deficiencies, the Draft Report required TRLA to include in their submission, proper and adequate supporting documentation for all employees including the Executive Director, and that TRLA include their policy as an attachment to its response to the Draft Report. In its response to the Draft Report, TRLA provided documentation indicating that the Credit Card Policy had been adopted by TRLA's Board of Directors on June 8, 2013, and internal procedures had been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 19(a) is closed.

The sampling evidenced that from October 1, 2010 through July 31, 2012, approximately \$20,800.00 of charges on the Executive Director's charge card statements were not supported with adequate documentation. As a result of these deficiencies, the Draft Report required TRLA to provide documentation as an attachment to its Draft Report substantiating why the \$20,800.00 of charges that were not supported with adequate documentation should be allowed. In its response to the Draft Report, TRLA indicated that they had reviewed the relevant credit card charges reviewed by OCE during the identified period that were not supported by the kind or type of documentation that appears to be preferred by the OCE Draft Report. All of the credit card charges in question were incurred by the Executive Director. According to TRLA, the Executive Director provides the same detail on charges as would be submitted on TRLA's various reimbursement forms (out-of-town travel, local travel, and out-of-pocket expenses). The Executive Director does not request reimbursement for mileage, per diem, meal and entertainment, and similar program-related expenses, other than those charged to the AmEx card. Since he does not use forms to seek reimbursement, the Executive Director furnishes a detailed explanation of each expense on the AmEx invoice before payment is made, such as the business purpose of travel or meal expenses that involve attorney recruitment or staff meetings. The independent auditor has agreed that this practice provides adequate documentation of the expenses, and in the course of his audits he has reviewed all of the expenses charged by the Executive Director. According to TRLA, the independent auditor reviews the Executive Director's charges with the Finance Committee and it is reported to the Board of Directors. That practice is now memorialized in writing through the Credit Card Policy adopted by the Board of Directors on June 8, 2013. During the period from January 1, 2010 through September 30, 2012,

⁶⁵ Credit card statements were selected from January 2010 through July 2012.

⁶⁶ The OIG *Report* found that credit card purchases were not supported with receipts. A test of disbursements noted that 27 of 38 charges on three (3) credit card statements did not have receipts attached from the vendors.

TRLA identified \$20,709.29 in charges made to the AmEx card by the Executive Director that were documented under the policy and practice described here. TRLA provided documentation to support that statement. Review revealed that each of the charges was reasonably and necessarily incurred for legitimate TRLA purposes and should be allowed. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 20 is closed.

Additionally, based on this sampling, TRLA was advised to establish approval procedures that take into consideration independent checks and proofs for the review process when there is a subordinate and a more senior employee.⁶⁷ A review of the Executive Director's AmEx charge card statements indicated that the statements were reviewed by the three (3) different employees: the Director of Administration; the Chief Financial Officer; and the Assistant Director of Finance. According to TRLA, the Director of Administration is a direct subordinate of the Executive Director. While TRLA has to a certain extent tried to mitigate the risks created when a subordinate has approval duties over a senior employee, this mitigation is somewhat ineffective as both the Chief Financial Officer and the Assistant Director of Finance both ultimately report to the Executive Director. A standard internal control would direct that the Executive Director's charge card expenses be approved by the Board of Directors through its Finance or Audit Committees.

Additionally, review of the charge card statements indicated that both the Chief Financial Officer and Director of Administration have TRLA issued AmEx charge cards which are used for their business expenses. According to the Chief Financial Officer, AmEx charge card statements are reviewed and approved by the Assistant Director of Finance, the Chief Financial Officer, and the Director of Administration, prior to payment. In effect, the Director of Administration reviews and approves his/her own expenses. This practice is an internal control deficiency, and demonstrates a lack of segregation of duties. TRLA was advised to have the Director of Administration's charge card statements be reviewed and approved by the Executive Director or Board of Directors through its Finance or Audit Committees. As a result of these deficiencies, the Draft Report required TRLA to have proper segregation of duties, with careful consideration and adequate mitigation given to the review process, when it would require a subordinate employee reviewing a senior employee's charge/credit card statements. In its response to the Draft Report, TRLA provided documentation indicating that the Credit Card Policy had been adopted by TRLA's Board of Directors on June 8, 2013, and internal procedures, had been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 19(b) is closed.

c. Cash disbursements/receipts- - electronic banking

In addition to not having a policy concerning its charge/credit cards, TRLA also did not have a written policy concerning electronic transactions. As explained, written policies are an important element for establishing adequate controls. *See* AGLR, § 3-4; also *see* § 3-5. As previously noted, two (2) electronic transactions were reviewed that evidenced TRLA paid several bills electronically without any written procedures documenting the process. Additionally, sampling consisting of two (2) bank statements for each fiscal year for 2010 through 2012 were reviewed

⁶⁷ The *OIG Report* did not discuss these issues and there was no Recommendation regarding this area.

and evidenced that TRLA established an on-line giving program in which on-line receipts are electronically deposited into its general operating fund account (this will be discussed in more detail in Finding 9). From a limited review of TRLA's Accounting Policies and Procedures Manual it was determined that the program's internal controls over electronic banking are weak because TRLA has failed to formalize written policies and procedures in accordance with the AGLR, § 3-5.15 (explaining the key elements and criteria for an electronic banking process); also *see* AGLR, App VII, -§ M (outlining the internal control checklist for electronic banking). As a result of TRLA's lack of written policy in this area, the Draft Report required TRLA to develop written policies and procedures that contain internal controls for electronic banking, and to include those documents as attachments to its response to the Draft Report. In its response to the Draft Report, TRLA provided an Electronic Banking Policy that was adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, that had been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 21 is closed.

Finding 9: From a limited review of TRLA's written policy over cash receipts and sampled cash receipts transactions, it appears that TRLA's procedures include accountability for cash upon receipt and proper segregation of duties.

Cash receipts are a permanent record of monies received; this record serves as a tool in maintaining the accuracy of the program's financial records. Initial accountability for cash received should be established as soon as a cash item is received. *See* AGLR, § 3-5.4 (explaining the key elements and criteria for cash receipts). The mail should be opened by an individual, when possible, with no other bookkeeping duties in order to decrease the risk of improper adjustments to the cash receipts log. *See* Id.

A Recipient's cash receipts system and procedures should be designed to provide reasonable assurance that all cash transactions are safeguarded, applicable revenues to the operations are recorded and accounted for properly, so that accounts and reliable financial reports may be prepared and accountability of cash be maintained, and that there is a clear line of segregation of duties that outline personnel specific responsibilities. Ideally, those who handle cash should not be involved in or have access to accounting records nor be involved in the reconciliation of cash book balances to bank balances. A weakness in this area occurs when an individual with recordkeeping responsibilities is also responsible for establishing the initial accountability for cash. In such cases, the individual could cash a check or money order and then adjust the records to cover irregularities. *See* AGLR, § 3-5.4.

The person opening the mail has several necessary duties to perform in order to establish adequate controls. First, all checks received should be restrictively endorsed by this individual and each receipt should be recorded in a log by this person as well.⁶⁸ *See* Id. The cash receipts log should list the amount and payor for each check or other cash item received and this record must be used by someone not in the finance office to verify the amount recorded in the general ledger and deposited in the bank. *See* Id.; also *see* AGLR, App VII, § H (outlining the internal

⁶⁸ The AGLR explains that when checks are not restrictively endorsed, the risk of those checks being cashed by an unauthorized individual significantly increases. *See* AGLR, § 3-5.4.

control checklist for cash receipts). This creates a running thread effect, as the Recipient's fiscal records should allow an individual to trace the cash receipt from the initial entry in the cash receipts log, to the deposit in the bank account, to the corresponding general ledger posting. *See* AGLR, § 3-5.4

i. Procedures and internal controls over cash receipts

According to TRLA's Accounting Policies and Procedurals Manual, all money received is recorded on a schedule of receipts on a daily basis by the Executive Secretary who opens all administrative mail. All monies received are given and reviewed by the Assistant Director of Finance who indicates to the Accountant the income account to which the monies are to be credited. All monies must be deposited to the general operating fund the same day they are received and all cash receipts are entered by the Accountant in the computerized cash receipt journal as a debit to cash in bank and as a credit to the proper income account; a deposit slip is prepared in duplicate at this time, and the original copy accompanies the cash to the bank. Before the deposit is made, it is verified by the Assistant Director of Finance and a copy of the deposit slip is left in the deposit record book. When the deposit receipt is returned, the Accountant verifies the amount imprinted by the bank in the deposit book and initials the deposit book. Deposit receipts are then filed in the permanent accounting files.

At the end of each month, the Chief Financial Officer verifies that the schedule of receipts has the same entries as the cash receipts journal; payments from grantors are received on both a monthly and a quarterly basis. Some are made by direct deposit. Those which arrive in check form are noted by the Executive Secretary. The Chief Financial Officer is responsible for verifying, if necessary, all contributions received from individuals or other sources must be categorized under one (1) of two (2) categories – restricted or unrestricted. All payments from grantors or individual contributors who are supporting a particular aspect of TRLA's work are restricted. Copies of all individual contributions are sent to the grant development coordinator by the Accountant when they are received and all checks received as cash receipts for the general fund must be stamped prior to being deposited. A stamp for TRLA's general operating account, payroll account, as well as all branch office client trust and petty cash accounts, must also be used for receipts being deposited into these accounts.

ii. On-site testing

While on-site, a sampling consisting of 46 cash receipt transactions, for fiscal years 2010, 2011, and nine (9) months of fiscal year 2012, were selected and reviewed from the cash receipts journal. The review disclosed no deficiencies; all manual checks deposits slips were traced to the cash receipts log, bank statements, and also all electronic deposits agreed to the bank statements.

However, an examination of the August 31, 2012 bank statement reconciliation and cash receipts log identified two (2) cash receipts that evidenced the following: TRLA received restitution from its insurance company in the amount of \$42,777.20 from a fraud case investigated by the OIG in a prior year, that was attributed to an employee, who was falsifying their expense reports; and a duplicate posting of one (1) cash receipt in the amount of \$7,096 was made to its cash receipt log

in error that was later identified during its cash receipts reconciliation. Also, one (1) cash receipt in the amount of \$833.43 was posted, in error, into one of TRLA's client trust accounts.

As noted above, sampling consisting of two (2) bank statements for each fiscal year for 2010 through 2012 were reviewed and evidenced that TRLA established an on-line giving program in which on-line receipts are electronically deposited into its general operating fund account. These electronic (on-line) receipts should be treated the same as cash, and recorded to TRLA's cash receipts log.

Finally, observations of TRLA's office operations, and interviews with the Chief Financial Officer, evidenced that TRLA does not have signage posted in the Weslaco office or branch offices, informing clients about the program's cash receipts policy, as to notification stating that the clients are entitled to a receipt for cash provided, and if a receipt is not provided that the client should see a supervisor.

In the Draft Report, it was recommended that TRLA have the employee who is responsible for posting the cash receipts to the cash receipts log, verify the checks posted to the log are in agreement with the checks received for that day; record all types of cash receipts to its cash receipts log (excluding client trust and petty cash receipts). These types of cash receipts should be recorded to a cash receipt log, where the deposits are specifically designated for the client trust and petty cash accounts. This best practice will help prevent the commingling of deposits as well as separating client trust receipts and petty cash receipts from the general operating fund receipts; and further strengthen its cash receipts policy by providing notification through signage to walk-in clients and/or applicants that they are entitled to a receipt for all cash submitted to TRLA. TRLA provided no response to this recommendation.

There are no corrective actions required as the limited fiscal review noted no fiscal abnormalities and TRLA's written policies and procedures conform to AGLR, § 3-5.4 (explaining the key elements and criteria for cash receipts system), and AGLR, App VII, § H (outlining the internal control checklist concerning cash receipts).

Finding 10: The on-site review evidenced that TRLA has adequate policies and procedures over bank reconciliation procedures and duties are properly assigned in performing these reconciliations. However, several exceptions were noted including oversight of stale checks, improper reconciliation procedures, a cash receipt being issued from a closed bank account and deposited into the general operating account, and, a cash receipt deposited into a trust account which was intended for the generating operating account.

Bank reconciliations serve to verify, at a particular point in time, that the bank balance noted in the monthly statements, provided by a financial institution, is the same balance noted in the program's own internal accounting records. Proper reconciliation procedures substantially decrease the occurrence of any irregular disbursements as the process requires the reconciler to conduct additional inquiry in order to correct any differences between the bank balance and the and the general ledger. *See* AGLR, § 3-5.2(d) (explaining the key elements and criteria for reconciliation procedures).

According to AGLR, bank statements are required to be reconciled monthly to the general ledger by a person who has no access to cash, not a regular check signer, and has no bookkeeping duties. *See Id.* The actual reconciliation should be documented in order to ensure timeliness and accuracy. *See Id.*

In addition to appropriate documentation, adequate bank reconciliation procedures can include: an assessment of voided checks; an accounting for serial numbers of checks; a comparison of dates and amounts of daily deposits as shown by the cash receipts records with the bank statements; confirmation that outstanding checks have been investigated and resolved; that bank statements are delivered un-opened directly to a management official for review prior to the reconciliation; and adequate review of the completed reconciliation by a fiscal officer. *See AGLR, App VII, § I* (outlining the internal control checklist for bank reconciliation procedures).⁶⁹

i. Procedures and internal controls over bank reconciliations

As of August 31, 2012, TRLA had 41 bank accounts with several financial institutions. According to TRLA's accounting policies and procedures manual, the chart of accounts, the general ledger, and various bank statements, there are five (5) types of accounts used by TRLA:

1. General operating fund account: TRLA's general operating fund account is used for routine business check disbursements. The general operating account bank statements are delivered unopened to the Weslaco office's accounting department, which immediately checks the amounts in the enclosed check copies and deposit slips against the amount on the bank printout. Checks for all these accounts are compared against the posted amounts in the receipts journal and the disbursements journal. All outstanding checks are listed and the resulting balance of the two (2) journals and bank statements should be equal to one another. *See AGLR, App VII, § A- 5; also see AGLR, App VII, § A-19; AGLR, App VII, § I-8.* Exceptions noted in this area are discussed below.
2. Payroll account: The payroll account is separate from the general operating fund account and is a fixed balance account. As such, only the amount needed to cover each payroll is transferred into this account from the general operating fund account. Transfers from the general operating fund account into the payroll account are initiated by the Chief Financial Officer through the use of a cash disbursement approval form. Payroll account bank statements are delivered unopened to the Weslaco office's accounting department, which immediately checks the amounts in the enclosed check copies and deposit slips against the amount which is on the bank printout. Checks for all these accounts are checked against the posted amounts in the receipts journal and the disbursements journal. All outstanding checks are listed and the resulting balance of the two (2) journals and bank statements should be equal to

⁶⁹ In lieu of having the bank statements reviewed by a management official prior to the reconciliation, a Recipient may opt to deliver the bank statements un-opened to the person preparing the reconciliation. *See AGLR, App VII, § I -8.*

one another. *See* AGLR, App VII, § A- 5; *also see* AGLR, App VII, § B-17; AGLR, App VII, § I-8. Exceptions noted in this area are discussed below.

3. Client trust accounts: The client trust account bank statements are delivered unopened to the Weslaco office's accounting department, which immediately checks the amounts in the enclosed check copies and deposit slips against the amount which is on the bank printout. Checks for all these accounts are checked against the posted amounts in the receipts journal and the disbursements journal. All outstanding checks are listed and the resulting balance of the two (2) journals and bank statements should be equal to one another. *See* AGLR, App VII, § A-5; *also see* AGLR, App VII, § I-1; AGLR, App VII, § I-8. Exceptions noted in this area are discussed below.
4. Petty cash accounts: The petty cash account bank statements are delivered unopened to the Weslaco office's accounting department, which immediately checks the amounts in the enclosed check copies and deposit slips against the amount which is on the bank printout. Checks for all these accounts are checked against the posted amounts in the receipts journal and the disbursements journal. All outstanding checks are listed and the resulting balance of the two (2) journals and bank statements should be equal to one another. *See* AGLR, App VII, § A-5; *also see* AGLR, App VII, § I-8. Exceptions noted in this area are discussed below.
5. Investment accounts: These accounts are used to invest excess cash resources in savings accounts, money market accounts, long-term Certificates of Deposit, or Treasury Notes. Comparative interest rates from at least three savings institutions are obtained and the funds deposited with the institution(s), which offers the best income return. Generally three (3) to six (6) Certificates of Deposits are obtained. Treasury Notes are purchased on the same basis. Prior to Savings, Money Market Account, Certificate of Deposit, or Treasury notes being purchased, a determination must be made of the source of the cash resources to be used. No more than one-month cash resources are maintained in TRLA's checking account at any one time. All other revenues are transferred to savings accounts, money market accounts, Certificates of Deposits or Treasury Notes. No checking account, savings account or Certificate of Deposit shall have a balance or value in excess of \$100,000 or a value greater than the maximum insurance amount for accounts of Deposit or Treasury Notes. Copies of Certificates of Deposit and Treasury Notes are kept in the accounting department. Savings passbooks, original Certificates, and Notes are kept in a safe. Individual balance sheets are maintained on each of these showing deposits, withdrawals, and interest paid. Dates of maturation of Certificate of Deposits and Treasury Notes are calendared by the Chief Financial Officer. The Executive Director and the Director of Administration must approve all transfers of cash from checking accounts into savings accounts, Certificates of Deposits, or Treasury Notes. A Corporate Transaction Form is prepared for all investment account transactions, which requires the signature of the Executive Director and Director of Administration. *See* AGLR, App VII, § A-5; *also see* AGLR, App VII, § I-8).

The Executive Director, Deputy Director, Director of Administration, Chief Financial Officer, and Branch Managers are authorized to sign checks and initiate other transactions on designated checking accounts.

ii. On-site testing

An examination of TRLA's accounting policies and procedures over bank account reconciliations was conducted to determine if the program had adequate internal controls in place to ensure compliance with LSC's AGLR and adherence to TRLA's management policies in the following areas: (1) comparison of cancelled checks with the check register; (2) examination of voided checks; (3) accounting for all check numbers; (4) proper endorsement of issued checks; (5) investigation of prolonged outstanding checks; (6) follow-up to any exceptions identified in the reconciliation; (7) making all "cash adjustment" entries through the bank reconciliation program; (8) review of bank reconciliations by the Chief Financial Officer and designated preparers' are signed and dated; (9) review of bank statements by the Chief Financial Officer and senior level management are signed and dated; and (10) filing of reconciliation worksheets and bank statements in date sequence in the bank reconciliation file. In assessing TRLA's policies and procedures over bank reconciliations in these 10 areas, interviews with pertinent personnel were conducted, relevant documentation and processes were reviewed, and general observations were made. Compliance testing of key functions was performed and actual operations were compared to applicable laws, regulations, and guidelines. The test period was from January 1, 2010 through June 30, 2012; however, in certain instances when it was deemed appropriate, the test period was expanded to August 31, 2012.

From the on-site testing of TRLA's internal controls over bank reconciliations, the following exceptions were noted relating to: (1) lack of investigation into prolonged outstanding, stale dated or voided checks as required by representation on TRLA's general operating fund account check stock. A review of TRLA's August 31, 2012 bank statement reconciliation for the general operating fund account, revealed that there were stale dated checks over 90 days old. At the time of the review, TRLA had no written policy regarding outstanding, stale dated or voided checks; however, the number of days denoted on the check generated from TRLA's general operating fund account, dictates that checks over 90 days old which have not cleared the bank are to be voided. The Chief Financial Officer advised the on-site review team that the Independent Public Accountant investigates prolonged outstanding or stale dated checks during the course of its annual audit. Old outstanding checks should be eliminated as they cause unnecessary clerical work in each bank reconciliation and also represent a threat to good internal control; (2) follow-up to any exceptions identified in the reconciliation. A review of TRLA's August 31, 2012 bank statement reconciliation revealed that there was a banking error. At the time of the review, TRLA had no written policy regarding the follow-up to any exceptions identified in the bank reconciliation. The Chief Financial Officer advised the on-site review team that follow-up to any exceptions identified in the reconciliation is done by telephone when notifying the financial institution; (3) bank statement reconciliations are not dated by those responsible for their preparation and/or review and approval. TRLA's unwritten policies and procedures dictated that each of its bank statement reconciliations be prepared by designated personnel. They were then reviewed and approved by the Chief Financial Officer. A limited review of TRLA's bank reconciliations for sampled bank accounts was conducted

regarding control procedures related to performing the bank reconciliation. From this sampling, it was determined that bank statement reconciliations were performed, but they were not always dated to indicate when they were prepared or reviewed. According to TRLA's Chief Financial Officer, TRLA did not have a formalized bank reconciliation policy. However, its unwritten policy required the Chief Financial Officer to designate preparers to sign and date the bank reconciliations. Since this step in the procedure was not fully implemented, it could not be determined whether TRLA's bank statement reconciliations were performed or reviewed in a timely manner; and (4) bank statements are not signed and dated by the Chief Financial Officer or senior level management to indicate their review and approval prior to their reconciliation. A sampling of TRLA's bank statements was tested for control procedures related to the review of bank statements by TRLA's management. From that testing, it was determined that TRLA's management did not always sign or date bank statements. *See* AGLR, App VII, § I-6.

In addition, review of TRLA's August 31, 2012 bank statement reconciliation for its (Inter National Bank) general operating fund, as well as the cash receipts log, evidenced that one (1) cash receipt in the amount of \$17.19 was received from the closing of a client trust fund bank account without Board approval of the account's closing.

Additionally, over the course of the extended review period (January 1, 2010 through August 31, 2012), TRLA's cash balance in at least two (2) general operating fund accounts exceeded the Federal Deposit Insurance Corporation ("FDIC") maximum allowed insured limits of \$250,000. LSC recommended that TRLA's management consult with its audit or finance committee to determine what, if any, mitigating controls need to be implemented to help alleviate this problem.

Finally, review of bank statement reconciliations evidenced that two (2) employees in the accounting department used five (5) consecutive days of annual vacation consistent with their policy and in their absence someone else was rotated in their position to perform their assignments. This was evidenced by the vacation employees time and attendance records (from June 30 through July 13, 2012, and August 11 through August 24, 2012), and by the rotated employee's signature and date on the reconciliations. This later was confirmed by the Chief Financial Officer, and the "Internal Control Worksheet" (as completed by TRLA).

As a result of TRLA's lack of written policies in this area, the Draft Report required TRLA to develop written bank reconciliation policies, and attach such to its response to the Draft Report, which include at a minimum:

- a. How old checks have to be before they are considered outstanding, stale dated, or voided;
- b. A voided check policy that is consistent and uniform with the number of days denoted on the check;
- c. Procedures to notify financial institutions in writing and/or by telephone when there is a follow-up to any exception identified in the bank statement reconciliation;

- d. The requirement that the Chief Financial Officer and designated preparers to sign and date bank statement reconciliations for which they are responsible for preparing, reviewing, and approving; and
- e. The requirement that Management review, sign, and date all bank statements indicating review and approval prior to their delivery to the designated preparers for reconciliation.

In its response to the Draft Report, TRLA provided supporting documentation indicating that TRLA's bank reconciliation policies and procedures had been updated in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 22 is closed.

Additionally, as a result of TRLA's lack of bank reconciliation procedures and follow-up and bank closings in this area, the Draft Report required TRLA to:

- a. Investigate its prolonged outstanding or stale dated checks and resolve them in a timely manner and include documentation evidencing same as an attachment to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated that the August 31, 2012 bank statement reconciliation for the general operating fund account had seven (7) stale checks that had been outstanding for over 90 days. Six (6) checks were voided on 9/31/2012, the end of the fiscal year. TRLA's prior policy was to void stale checks at the end of the fiscal year. The remaining check was payable to the Social Security Administration and is still under investigation. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 23(a) will remain open, pending completion of the investigation by TRLA of the last remaining check. Within 30 days from release of this Final Report, TRLA should provide OCE with an update on the status of this investigation.

- b. Revise its Client trust and Petty cash bank statement reconciliation forms to include the date(s) that the check(s) was issued or disbursed and include documentation evidencing same as an attachment to its Draft Report.

In its response to the Draft Report, TRLA provided supporting documentation indicating that the Client Trust and Petty Cash Bank Statement Reconciliation forms had been revised to include the date(s) that the checks(s) were issued or disbursed. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 23(b) is closed.

- c. Verify from its bank statement reconciliations that all banks have been notified of any banking errors and include documentation evidencing same as an attachment to its Draft Report; and

- d. Demonstrate that any bank account closings in 2012 received Board approval (and if not TRLA must notify its Board of the closing), and include documentation evidencing same as an attachment to its Draft Report.

In its response to the Draft Report, TRLA indicated that no banking errors were discovered and that TRLA notifies its Board of Directors at regular board meetings of any bank account closings or signature changes, and provided supporting documentation.

Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 23(c-d) are closed.

In the Draft Report, it was recommended that TRLA explain how management intends on implementing mitigating controls in an effort to maintain the maximum allowed insured limits of \$250,000 set by FDIC and include documentation evidencing same as an attachment to its Draft Report; and that TRLA management consult with its audit or finance committee to determine what, if any, mitigating controls need to be implemented to help alleviate this problem. TRLA provided no responses to these recommendations.

Finding 11: The on-site review evidenced that TRLA has adequate policies and procedures over petty cash and duties are properly assigned in safeguarding, disbursing and replenishing cash. However, it appears that TRLA may not meet signatory requirements in at least four (4) branch offices at the time of the review.

A Recipient's petty cash system and procedures should be designed to provide reasonable assurance that petty cash is properly safeguarded, disbursed and replenished. The petty cash fund should be maintained in a designated account, recorded in the general ledger, and petty cash reimbursements should be periodically reviewed, to ensure required procedures are being followed. A Recipient's petty cash process should have established policies for creating or increasing the petty cash fund, disbursing from and replenishing the fund, changing the fund custodian or transferring the fund to a backup custodian, reconciling the fund balance, and closing out the petty cash fund. A weakness in this area may result in the misuse of funds. *See* AGLR, § 3.5.4(c) (explaining the risks for misuse of petty cash).

According to the AGLR, a Recipient's petty cash fund are funds held for paying small and emergency expenditures. *See* Id., § 3.5.4 (c). A proper petty cash system will have incorporated the same or all of the following elements/or practices:

1. A Board approved petty cash policy;
2. The responsibility for a petty cash fund should be vested in only one person per office/cash box;
3. Petty cash vouchers should: be required for each disbursement, signed by the recipient of the cash disbursed, executed in ink and approved by a responsible person; and

4. Restricted in its use, especially in terms of the maximum amount for each disbursement.

See Id., App VII, § K nos. 1-14 (for complete list of internal control criteria regarding Petty Cash Controls).

i. Accounting procedures and internal controls over petty cash

According to the Chief Financial Officer, and as evidenced by TRLA's policy, each TRLA branch office maintains a petty cash checking account in a local bank. Disbursements are made for litigation advances, freight, cleaning supplies, and other minor expenses. Each petty cash account should have as signatory's two (2) attorneys and two (2) secretaries. Each check should be signed by one of each, and the secretary who types the check does not have authority to sign it. Each petty cash account is operated on an imprest basis, and the amounts vary from \$300 to \$7,000 depending on the size and activities of each branch office. If the bank balance drops down to \$200 before the end of the month, a partial report showing expenses to date may be submitted for reimbursement. Bank statements for each petty cash accounts are sent directly to the Weslaco office to the attention of the Accounting Department.

According to TRLA's Accounting Policies and Procedures Manual, no check may be made payable to "Cash" or to an employee, nor is cash kept in the office for petty cash expenses. Disbursements from the petty cash accounts are the responsibility of the Branch Manager. This account is not to be used to pay travel, publications, or other items; these items must be approved, by the central accounting office. With the exception of litigation advances, which may be up to \$500.00 per case, the central accounting office must pay any expenditure in excess of \$25.00 per item unless approved in advance by the Chief Financial Officer. No one should sign a check before it has been written out completely. Before a check may be typed, a petty cash requisition form or, for litigation advances, a client trust requisition form must be generated through the Client Tracking System, printed out, and approved by the Branch Manager. Disbursements are processed using four (4) part voucher checks, which provide a summary or record of all transactions and act as a disbursements journal for that account. These four (4) part petty cash voucher checks are then distributed accordingly. At the beginning of each month, the responsible secretary submits a petty cash account deposit and disbursement log, with receipts and part three (3) of the petty cash checks attached, to the Weslaco Accounting Department. Reimbursement is made of all expenses if the report is in order, including submission of all original receipts or, in the case of litigation advances, the client trust requisition form. Before the end of the month, a partial report showing expenses to date may be submitted for reimbursement. In this case, an additional report must be submitted at the beginning of the month, showing the expenses for the balance of the previous month.

ii. On-site testing

The on-site review of TRLA's petty cash controls evidenced that TRLA has a Board-approved petty cash policy that requires petty cash funds to be maintained in an imprest bank account. At the time of this review, TRLA maintained 16 designated petty cash imprest accounts. The funds maintained in these accounts have restricted limits and the maximum amount for each disbursement cannot exceed that limit (of \$7,000.00). An analysis of TRLA's bank statement

reconciliation for the Austin office, as of August 31, 2012, indicated that \$5,826.81 had been recorded in the general ledger and was in agreement with the bank balance for this period. Also, it appears from the review of the bank statement reconciliations, each petty cash statement was mailed directly to the Weslaco office as stated in TRLA's policy. However, it appears that, in at least four (4) offices, TRLA may have not complied with its signatory requirements, as outlined in its Accounting Policies and Procedures Manual. The review of a listing of bank accounts and account signatories revealed potentially insufficient assignment of staff for required signatory requirements. As stated in the Accounting Policies and Procedures Manual, TRLA should have as signatories two (2) attorneys and two (2) secretaries. As a result of this discrepancies, the Draft Report required TRLA to demonstrate that it has the required signatory requirements for each of the 16 branch offices and provide documentation evidencing same as an attachment to its comments to the Draft Report. In its response to the Draft Report, TRLA provided supporting documentation indicating procedures have been revised in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 24 is closed.

Finding 12: The on-site review evidenced that TRLA has adequate policies and procedures over its client trust accounts and duties are properly assigned for safeguarding, disbursing, and reconciling client trust deposits.

A Recipient's client trust fund system and procedures should be designed to provide reasonable assurance that client trust funds are safeguarded, disbursed, and reconciled, as well as client records being properly maintained. The client trust fund should be maintained in an imprest bank account, and all transactions should be accurately recorded in the general ledger, and client trust disbursements should be authorized and approved by the governing body. A Recipient's client trust fund process should have established policies for receiving client trust deposits, disbursing payments from the client fund, reconciling the client trust fund balance, and closing out the client trust fund account. A weakness in these areas may result in irregular transactions being undetected, or accountability of client funds being lost, client funds being diverted, unauthorized disbursements, misappropriation of client funds, reconciliation errors, sanctions place on attorneys or the executive director. *See* AGLR, § 3.5.7 (outlining the risks involved in having inadequate controls over client trust funds).

According to the AGLR, a Recipient's client trust fund account records should be maintained and controlled in compliance with applicable laws. In addition, a proper client trust fund account system will have incorporated same or all of the following elements and/or practices:

1. A board approved client trust fund policy;
2. Client funds must be deposited into bank accounts that are used only for the client's intended purpose (imprest account);
3. Client funds must be deposited into bank accounts that are used only for the client's intended purpose (imprest account);

4. Client Trust Fund Accounts should maintain the following records: cash receipts book, cash receipts journal and a detailed record of the activity for each client's account;
5. Two (2) signatures should be required on checks;
6. The client trust fund account should be reconciled monthly by an individual not involved with client deposit operations;
7. Procedures should be in place to insure cash receipts are not be commingled with petty cash fund; and
8. Unclaimed funds are to be turned over to the state unclaimed fund account as required by state law.

See Id., § 3.5.7; *see also* App VII, § L (outlining controls over client trust fund accounts).

i. Procedures and internal controls over client trust deposits

According to TRLA's Accounting Policies and Procedures Manual, each TRLA branch office maintains an individual client trust account. All client funds must be deposited in these separate accounts and cannot be commingled with TRLA's operating funds or any petty cash accounts. TRLA uses several forms in implementing its client trust system: (1) a four (4) part client trust receipt to document client receipts and account balances; (2) a client trust account deposit and disbursement log to provide a record in numerical order of the client trust receipts used, the amount of funds collected, and the amount disbursed; (3) a client trust check requisition to provide support and data required to prepare a client trust check; (4) a four (4)part client trust account voucher check to have an accounting record for client trust checks disbursements; and (5) a client trust account monthly review list to assure timely disbursement or return of client funds.

The disbursement of client funds involves the preparation of a check requisition and a four (4) part client trust voucher check. The client trust check requisition is prepared by the case attorney or paralegal though the Client Tracking System ("CTS"), and provides all the information needed to prepare and properly record the disbursement against clients' account balances. The individual responsible for preparing client trust checks in each branch office must review the active client trust files to ascertain that sufficient funds have been collected previously from the client before approving the disbursement. As noted previously each account should have as signatories two (2) attorneys and two (2) secretaries. Each check should be signed by one (1) of each. The secretary who types the check should not sign it.

Once the client trust account funds have been completely disbursed, the account should be closed. Until such time as trust logs are maintained in the CTS, the client trust form will be

removed from the active file and placed in alphabetical order in an inactive file. These records are maintained by TRLA for a period of seven (7) years and are then destroyed.⁷⁰

In the case of client trust account advances, funds from the client trust account cannot be used, even when TRLA expects to be reimbursed later. An attorney or paralegal wishing to advance a client's court costs must prepare a check requisition form using the CTS and provide all information needed to prepare a check and properly recorded it.

According to TRLA's Accounting Policies and Procedures Manual, any office with three (3) or more secretaries is required to divide the trust account duties in such way that the person who receives money also makes out receipts, the person typing out the checks records them (but has no check signing authority), and the person depositing monies received also prepares the financial reports. These step-by-step procedures are very detailed and beginning with the receipt of client funds (at the branch offices), through the disbursement process, and finally through closing of the client trust account. This structure was evidenced by the "Internal Control Worksheet" (as completed by TRLA), which identified each person assigned duties in the step-by-step process.

ii. On-site testing

The on-site review of TRLA's client trust fund controls evidenced that TRLA has a Board-approved client trust policy that requires client trust funds to be maintained in an imprest bank account. An examination of TRLA's San Antonio office January 31, 2012 client trust bank account reconciliation was conducted. From the review, it was determined that the client trust bank balance of \$6,668.49 was in agreement with the general ledger balance, and all monthly cash receipts and cash disbursements reconciled to the asset and liability accounts on the statement of financial position, as well as the client trust account report. Also, it appeared, from the review of the bank statement reconciliation, that the bank statement was mailed directly to the Weslaco office as stated in TRLA's policy.

There are no recommendations or corrective actions required as TRLA's written policy and procedures evidenced conformity to AGLR, App VII, § L (outlining the internal control checklist for client trust accounts).

Finding 13: The on-site review evidenced that TRLA does not have a written mandatory document retention and periodic destruction policy for its records.

A Recipient should have a written mandatory document retention and periodic destruction policy. Such a policy helps limit accidental or innocent destruction. The document retention policy should include guidelines for handling electronic files and voicemail. The policy should also cover back-up procedures, archiving of documents, and regular check-ups of the system. If an official investigation is underway or even suspected, Management must stop any document purging in order to avoid possible criminal obstruction charges. *See* AGLR, App II, which

⁷⁰ TRLA does not have a formalized document retention policy. *See* Finding No. 13.

discusses the need for LSC recipients to have a written mandatory document retention and periodic destruction policy.

According to TRLA's Chief Financial Officer, at the time of the review the program did not have a written documented retention and periodic destruction policy. However, the Chief Financial Officer disclosed that TRLA had an unwritten policy that is based on LSC's AGLR. As a result of TRLA's lack of written policies in this area, the Draft Report required TRLA to develop written policies and procedures that document record retention and periodic destruction policies consistent with the requirements of AGLR, App II (outlining the retention times for nonprofit records); *also see* "LSC Grant Assurances for Calendar Year 2012" No. 17 (requiring Recipients to maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant). In its response to the Draft Report, TRLA provided supporting documentation indicating that TRLA now has a written Document Retention Policies, which were adopted by Board of Directors on December 21, 2012, that had been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 25 is closed.

Finding 14: The on-site review evidenced that TRLA developed and implemented a written policy and procedures for cell phones, Personal Digital Assistant devices ("PDA") and other technology products as recommended by LSC's OIG.

During the OIG audit, it was determined that the grantee did not have formal written policies and procedures for cell phones, PDA devices and other technology products. According to the *Report*, TRLA had an informal policy that authorized its staff members to be reimbursed for cell phone use and in some cases provided staff members with a cell phone. The *Report* explained that while most of the reimbursements were either \$50.00 or \$25.00 per month, three (3) executives were reimbursed at a higher amount. It seems that, at the time of the OIG audit, TRLA indicated that it was in the process of developing a written cell phone and "Personal Digital Assistant" policy. Subsequent to its on-site review, the OIG recommended that TRLA take action to develop and implement written policies and procedures for cell phones, Personal Digital Assistant devices, and other technology products.

While on-site, the OCE team reviewed TRLA's new cell phone and Personal Digital Assistant policy; however, conformity with the new policies could not be tested because TRLA indicated that the policies would go into effect on October 1, 2012.

The policy requires TRLA to provide a stipend or a cell phone allowance to case handlers, administrative staff and Management for official TRLA business purposes. According to the policy, examples of "business purpose" include, but are not limited to, an employee who travels frequently on behalf of TRLA, an employee who is frequently out of the office on TRLA business, or a key member of personnel whose authorization and/or guidance is essential in the event of an emergency. In order to receive the cell phone allowance, staff must complete a "Cell Phone Allowance Request" explaining how the cell phone will be used for TRLA business purposes and indicate that they have read and understand this policy by signing it. The signature

of the employee's primary supervisor and Director of Administration on the form authorizes the Accounting Department to establish the allotment covering the cell phone allowance. TRLA agrees to provide a flat-rate monthly allowance, independent of the cell phone provider selected by the employee. The monthly allowance varies depending on the employee; staff attorneys and paralegals receive \$25.00 per month while managers receive \$50.00 per month. Payments will be made to employees during the first week of each month without the requirement of submission of further documentation. Employees on long-term absences may have such payments suspended during such absence pending a determination by their primary supervisor and the Director of Administration. Employees receiving such an allowance must allow TRLA to include their cell phone number on TRLA's intranet site. The employee is responsible for contracting with a cell phone service provider, paying any initial plan charges, the purchase of the cell phone itself, and paying the monthly subscription bills.

Additionally, TRLA will provide TRLA-owned data cards (for example, cellular mobile cards, and mobile hot spots) only to TRLA employees who have demonstrated a need for the frequent use of such features. Examples of those who might qualify include employees who frequently conduct TRLA business outside the office (e.g. intake or court hearings in rural areas, disaster outreach) and require access to the "Client Tracking System." Such data cards are overseen by TRLA's Information Technology ("IT") department and are paid for directly by TRLA.

There are no fiscal related recommendations or required corrective actions regarding TRLA's policy regarding cell phones and PDAs.

Finding 15: The on-site review evidenced that TRLA developed and implemented written policies and procedures that prohibit the use of LSC funds to purchase alcoholic beverages, as recommended by LSC's OIG.

According to LSC's regulation 45 CFR § 1630.3, recipient expenditures should be reasonable and necessary for the performance of the grant. Also, a program advisory letter dated March 8, 2008, notified grantees of the prohibition on the purchase of alcoholic beverages, citing the guidance in the Office of Management Budget ("OMB") Circular A-122, Cost Principles for Non-Profit Organizations.

The OIG recommended that TRLA take action to develop and implement written policies and procedures that prohibit the use of LSC funds to purchase alcoholic beverages.⁷¹ From a limited review of TRLA's prohibited purchase policy, which was approved by its Board of Directors on September 22, 2012, it appears that adequate controls have been implemented by TRLA. However, according to the Chief Financial Officer, there was one (1) occurrence during the review period in which LSC funds were mistakenly used to purchase alcohol beverages. As a result of this issue, the Draft Report required TRLA to transfer back to LSC, any LSC funds that were used to purchase alcohol beverages in 2010 through 2012 and provide documentation evidencing same as an attachment to its comments to the Draft Report. In its response to the Draft Report, TRLA indicated that their policy prohibits the expenditure of program funds for

⁷¹ This is Recommendation No. 8 from the OIG Report.

alcoholic beverages and refuses to reimburse any employee for such prohibited expenses. TRLA also indicated that after an exhaustive search, it was unable to identify any employee expense reimbursement forms or receipts indicating a reimbursement for alcoholic beverages during the indicated period. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 26 is closed.

Finding 16: The on-site review evidenced that TRLA has developed and implemented a cost allocation policy; however, the following exceptions were noted (that appear to be the same exceptions identified by LSC's OIG): (1) TRLA's cost allocation policy should be more defined and grant specific for each funding source; and (2) TRLA's criteria for the allocation of front office costs for the Public Defender Program ("PDP") is inconsistent with the application of its methodology as described in its cost allocation policy.

LSC regulation 45 CFR Part 1630 provides uniform standards governing the allowability and allocability of costs charges to LSC grants and contract.⁷² The regulation recognizes two (2) types of costs; direct costs and indirect costs. *See* 45 CFR §§ 1630.3(d) and (e). A direct cost is a cost that can be identified specially with a particular cost objective, *i.e.* grant, contract. *See* 45 CFR § 1630.3(d). Examples of direct costs include salaries and wages of staff who are working on cases or matters that are specific to a grant or contract. *Id.* However indirect costs are costs that cannot be readily identified to a specific cost objective as the costs have been incurred for a common or joint objective. *See* 45 CFR § 1630.3(e). An example of an indirect cost is the cost associated with operating and maintaining office space. *See Id.* Regardless of whether the cost is direct or indirect, before a cost can be charged to a grant or contract, it must be allowable, reasonable, and allocable. *See* 45 CFR §§ 1630.3(a), (b), and (c).

A cost is allowable if the Recipient can, for example, demonstrate that the cost was:

- (1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;
- (2) Reasonable and necessary for the performance of the grant or contract as approved by the Corporation;
- (3) Allocable to the grant or contract;
- (4) In compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;
- (5) Consistent with accounting policies and procedures that apply uniformly to both Corporation-financed and other activities of the recipient;

⁷² Many sections of CFR Part 1630 and its terms are patterned after or incorporate the provisions of 2 CFR Part 230, *Cost Principles for Non-Profit Organizations*. Therefore, 2 CFR Part 230 provide guidance to LSC cost principles only to the extent that they are not inconsistent with relevant LSC policies or criteria. *See* 45 CFR § 1630.3(i).

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles;

(9) Adequately and contemporaneously documented in business records accessible during normal business hours to Corporation management, the office of the Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

See 45 CFR § 1630.3(a)(1)-(9) (for a complete list of allowability criteria).

A cost is considered reasonable if, in its nature or amount, if it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. *See* 45 CFR § 1630.3(b). Finally, the cost must be allocable to a particular cost objective, *i.e.* grant, project. A cost is allocable to a grant or other project if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

1. Is incurred specifically for the grant or contract;
2. Benefits both the grant or contract and other works and can be distributed in a reasonable proportion to the benefits received; or
3. Is necessary to the overall operation of the Recipient, although a direct relationship to any particular cost objective cannot be shown.

See 45 CFR § 1630.3(c).

The OIG noted the following issues regarding TRLA's cost allocation policies and methodologies:⁷³

1. The Basic Field grant was not fully documented;
2. TRLA did not allocate a share of front office expenses to TRLA's Public Defender Programs; and
3. Migrant grant costs were not allocated based on actual expenditures made for each of the six (6) state service areas.

While on-site the members of the review team conducted a limited fiscal review in order to determine TRLA's progress in each Recommendation.

OIG Recommendation No. 1: That the allocation system was not fully documented.

⁷³ These are Recommendation Nos. 1-3 from the *Report*.

According to the *Report*, while TRLA was able to provide the OIG with a written cost allocation policy, TRLA indicated that the policy had not yet been approved by its Board of Directors. The OIG determined that the submitted policy was a general description of TRLA's allocation system but because it did not specify in detail how TRLA would allocate different costs among its various grants the allocation policy was presumably insufficient.⁷⁴ TRLA responded and indicated that cost allocations measures would be reviewed, edited, and included in its Accounting Policies and Procedures Manual.

Subsequently, TRLA indicated that its cost allocation policy had been adopted by its Board of Directors at the annual board meeting on September 22, 2012. During the course of the FIC review, the cost allocation policy was reviewed and evidenced adequate cost allocation measures pursuant to 45 CFR § 1630.3. However, the revised policy does not explain how costs are specifically allocated for each funding source. As evidenced below, the methodology is explained, but it is not grant specific.

According to the reviewed cost allocation policy:

1. All allowable direct costs are charged directly to programs, grants, activity, etc. in accordance with 45 CFR § 1630.3(d);
2. Allowable direct costs that can be identified to more than one grant are prorated individually as direct costs using a base most appropriate to the particular cost being prorated in accordance with 45 CFR § 1630.3(f);
3. All other allowable general and administrative costs (those that benefit all programs and cannot be identified to a specific program) are allocated to programs, grants, etc. using a base that results in an equitable distribution in accordance with 45 CFR § 1630.3(d); and
4. An exception would be a grant that funds only one category of expenses (example salaries only) as the grants normally designates the amount of each category of expense.

TRLA's cost allocation policy should be more defined and grant specific for each funding source in order to account for restrictions imposed by various funding sources. *See* 45 CFR § 1630.3(c).

As a result of these issues, the Draft Report required TRLA to review and provide supporting documentation relating to its cost allocation methodology for TRLA's Basic Field-General and in accordance with the OIG Recommendation:

- a. Revise its Cost Allocation Policy by making it more defined and grant specific (*i.e.* detailing the methods used to allocated costs for each natural expense line item, by grant); *See* 45 CFR § 1630.3(c).

⁷⁴ The *Report* indicates that the AGLR requires that a Recipient's cost allocation methodology be in writing. Recipient and its Board approved an annual overall financial plan or operating budget to allocate its resources and provide a system of evaluation and control.

In its response to the Draft Report, TRLA indicated that, after reviewing the cost allocation policy, it believes that it meets OIG's guidelines and that its cost allocation policy is defined and grant specific. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 27(a) is closed.

- b. Obtain Board of Directors approval of the revised Cost Allocation Policy.
- c. Provide documentation evidencing same (nos. 1-2) as an attachment to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated the cost allocation policies and procedures as approved by TRLA's Board of Directors on September 22, 2012 are contained in the TRLA Accounting Policies and Procedure Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 27(b-c) is closed.

Recommendation No. 2: That the allocation system includes a methodology to allocate a fair share of the central office costs to the Public Defender Programs.

According to the *OIG Report*, TRLA was not allocating non-personnel central office administrative and management overhead expenses to its Public Defender Program.⁷⁵ The OIG determined that a significant portion of these costs were charged to the LSC fund account, so LSC funds may have been used to subsidize prohibited activities.⁷⁶

A limited review of TRLA's Audited Financial Statements for fiscal years 2010 and 2011 revealed that front office costs related to its Public Defender Program may not be being allocated in accordance with its cost allocation policy. TRLA's cost allocation policy identifies certain expense line items as indirect costs (front office costs) that should be allocated as follows:

- (b) **travel costs** (seminars, training, conference and other) are allocated based on purpose of travel. All travel costs (local and out-of-town) are charged directly to the program for which the travel was incurred. Travel costs that benefit more than one program will be allocated to those programs based on the ratio of each program's funding to the total funds;
- (d) **office expense and supplies** (including office supplies and postage) are allocated based on usage, expenses used for a specific program will be charged directly to that program, postage expenses are charged directly to programs to the extent possible, costs that benefit more than one program

⁷⁵ These are classified as indirect costs because they cannot be readily identified to a specific cost objective as the costs have been incurred for a common or joint objective. See 45 CFR § 1630.3(e). An example of an indirect cost is the cost associated with operating and maintaining office space. See *Id.*

⁷⁶ The *Report* indicated that the OIG could not readily determine, from the information provided, the dollar amount of non-personnel central office administrative and management overhead expenses so it could not estimate the amount of costs that should have been allocated to the Public Defender Programs.

will be allocated to those programs based on the ratio of each program's funding to the total funds;

- (f) **office expense** (including office accessories, supplies, postage, and printing) expenses are charged directly to programs that benefit from the service, costs that benefit more than one program will be allocated to those programs based on the ratio of each program's funding to the total funds;
- (g) **insurance** needed for a particular program is charged directly to the program requiring the coverage, other insurance coverage that benefits all programs is allocated based on the ratio of each program's funding to the total funds;
- (h) **telephone/communications** that included long distance and local calls are charged to programs if readily identifiable, other telephone or communications expenses that benefit more than one program will be allocated to those programs based on the ratio of each program's funding to the total funds;
- (i) **space expense** (rent, utilities and maintenance) are allocated to the program using space, if there is more than one program using the space, the square footage used by each program is calculated, the ratio of each program's square footage is determined based on total square feet.

According to the cost allocation policy, front office costs that cannot be directly charged to a grant should be allocated based on the ratio of each program's funding to the total funds. In other words, front office costs should be allocated using the following formula:

$$\text{Program's funding source} \div \text{Total funding received} = \% \text{ ratio}$$

Therefore, for fiscal years 2010 and 2011, using the above referenced formula, the ratio of costs should have been:

Fiscal year 2010

$$965,865 \text{ (Public Defender Program)} \div 25,544,924 \text{ (TRLA total funding)} = 4 \% \text{ ratio}$$

Fiscal year 2011

$$822,560 \text{ (Public Defender Program)} \div 26,502,400 \text{ (TRLA total funding)} = 3 \% \text{ ratio}$$

Based on this formula, the Public Defender Program's share of front office cost should be at least 4% and 3%, respectively, of TRLA's funding for the above referenced fiscal years. However, according to the Audited Financial Statements, Public Defender Program's fund balance account (for some front office costs) was charged less than the 4% and 3% ratio amount. The tables below summarize the costs allocation method used in 2010 and 2011 to distribute/allocate **office expense**.

Funding source	LSC	TAJ ⁷⁷	PDP ⁷⁸	OTHER	OPERATIONS	NATIONAL MIGRANT	TOTAL
Grant amount	13,582,684	8,475,117	822,560	3,264,868	356,522	649	26,502,400
Actual expenditure	186,074	19,186	3,862	32,431	3,927	0	245,480
Projected allocated amount	125,195	78,554	7,364	31,912	2,455	0	245,480
Differential amount ⁷⁹	60,879 ↔	59,368	3,502	(519)	(1,472)	0	60,879

For Fiscal Year 2010:

For Fiscal Year 2011:

⁷⁹ Projected allocated amount - Actual expenditure amount = Differential amount.

⁷⁹ Projected allocated amount - Actual expenditure amount = Differential amount.

Funding source	LSC	TAJ ⁸⁰	PDP ⁸¹	OTHER	OPERATIONS	NATIONAL MIGRANT	TOTAL
Grant amount	13,667,364	7,847,588	965,754	2,796,143	267,047	1,028	25,544,924
Actual expenditure	215,961	33,617	9,016	20,397	2,458	0	281,449
Projected allocated amount	149,168	87,249	11,258	30,959	2,815	0	281,449
Differential amount ⁸²	66,793	↔ 53,632	2,242	10,562	357	0	66,793

As demonstrated in the above referenced tables, TRLA's total office expense of \$281,449.00 in 2010 and \$245,480.00 in 2011 was not allocated proportionally among funding sources because in each year over half of the costs were charged to the LSC fund account. TRLA's fair share of total office expenses for the Public Defender Program should have been allocated based on a ratio of 4%, or \$11,258.00, in 2010 and 3%, or \$7,364.00, in 2011. However, the ratio TRLA used for allocating total office expense was 3%, or \$9,016, in 2010 and 2%, or 3,862, in 2011. From this analysis, as indicated by the differential amounts, it appears TRLA used LSC Basic Field-General funds to subsidize the Public Defender Program as well as TAJ (Other and Operations - only in 2010), for fiscal years 2010 and 2011.⁸³

As a result of these issues, the Draft Report required TRLA to look at its Public Defender Program's fair share of front office expense and in accordance with the OIG Recommendation:

- a. Should consult with its IPA in determining for each front office expense (see b through i), the amount of LSC funds (if any) that were used to subsidize the Public Defender Program in fiscal years 2010 through 2012.

In its response to the Draft Report, TRLA indicated that they have consulted their IPA and will consult with them at the end of fiscal year 2013. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(a) is closed.

- b. Must transfer from non-LSC funds to the LSC fund balance all monies identified where LSC funds were used to subsidize the Public Defender Program.

In its response to the Draft Report, TRLA provided supporting documentation indicating that it has used the allocation formula suggested by OCE in the Draft Report, and has made an adjusting entry from the unrestricted account to the LSC fund account in the amount of \$5,710 for fiscal years 2010 through 2012. The amount transferred covers indirect costs of the operation of the central administrative office attributable to the Public Defender Program. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(b) is closed.

- c. Must follow its current policy and allocate a fair share of front office costs to the Public Defender Program for fiscal year 2013 and forward.

In its response to the Draft Report, TRLA noted that it will continue to follow its current policy and allocate a fair share of indirect cost to the Public Defender Program for fiscal year 2013 and forward. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(c) is closed.

- d. Must determine if LSC funds are used to subsidize any other programs and

⁸³ *Projected allocated amount - Actual expenditure amount = Differential amount.*
year were not available. Therefore, a meaningful analysis could not be ascertained for the 2012 fiscal year.

take the appropriate steps in resolving these occurrences.

In its response to the Draft Report, TRLA indicated that, after reviewing the information, it had determined that no LSC funds were used to subsidize any other non-LSC-eligible programs. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(d) is closed.

- e. Must demonstrate that a fair share of front office expense was allocated to the Public Defender Program and include in its response to the Draft Report a summary explaining how.

In its response to the Draft Report, TRLA disagrees that a fair share of "front office expense" was not allocated, although they made an entry at the end of June 2013 to TRLA's general ledger from unrestricted to LSC funds in the amount of \$5,710 for fiscal years 2010 through 2012. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(e) is closed.

Recommendation No. 3: That the Executive Director ensure that a cost allocation is developed that accurately accounts for the expenditure of LSC funds for each migrant grant and that the LSC funds provided are expended for services applicable to the respective service area.

The OIG determined that TRLA's cost allocation system for the migrant grants was not based on the expenditures made providing services to clients in each service area. The *Report* explained that costs were allocated based on the percent of each grant to the combined total of the six (6) migrant grants received, thereby treating the six (6) grants as single grant with one (1) service area.⁸⁴ TRLA advised the OIG that costs cannot be allocated based on the actual time SMLS attorneys and paralegals spend on cases because of the patterns of migrant agricultural employment, the nature of migrant legal services, and the *de minimis* size of the individual grants.

According to the *Report*, TRLA indicated that it would obtain LSC approval to pool the migrant funds. Assuming that approval is not given, TRLA must properly account for each of the six (6) migrant grants separately pursuant to the funding appropriations. The on-site review demonstrated that TRLA has systems in place that can (1) track attorneys and paralegals time spent working on cases, matters, and supporting activities through the use of the "Client Tracking System," and (2) allocate revenue and expenses for each individual migrant grant received from LSC, through the use of their Customized Accounting and Payroll system.

While on-site, a review of the Audited Financial Statements for fiscal years 2010 and 2011 evidenced Texas Migrant funds are used to offset any deficit spending by SMLS. The Chief Financial Officer confirmed that at the end of each fiscal year, during the annual audit, an intra-fund transfer is made which transfers an amount equal to the fund balance deficit in the SMLS fund account from the Texas Migrant fund account. As a result of this practice, the Texas Migrant fund is subsidizing the SMLS program.

⁸⁴ TRLA operates the Southern Migrant Legal Services Project ("SMLS") and its administrative office is located in Nashville, Tennessee. SMLS serves migrant farm workers residing in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee through LSC funding by individual migrant grants for each state served.

As a result of these issues, the Draft Report required TRLA to assess their cost allocation methodology for TRLA's Migrant grant and in accordance with OIG recommendation:

- a. Accurately account for direct and indirect costs charged to its SMLS program by individual service area.
- b. Prepare a general journal for all transfers between LSC Basic-Field, LSC Texas-Migrant, and LSC SMLS Migrant (by expense category and by service area).
- c. Until further notice, use non-LSC funds to offset any deficit spending in SMLS.

TRLA argued that an effective, efficient migrant program can only be operated in the manner that TRLA has operated the Southern Migrant Legal Services Program ("SMLS"), pooling the seven grants to operate on a joint, regional basis. TRLA requested that the Corporation permit TRLA to pool its migrant grants to operate an integrated, regional migrant delivery system in Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee and Kentucky.

After reviewing information provided by TRLA, LSC determined to combine all seven (7) migrant service areas into one (1) area for competition purposes. Notice of that action was published on December 26, 2013.

Based on the actions taken by LSC, corrective action No. 29(a-c) are closed.

Finding 17: The on-site review evidenced that TRLA is in compliance with 45 CFR Part 1609 (Fee-generating cases).

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

Recipients may provide legal assistance in such cases where the case has been rejected by the local lawyer referral service, or two private attorneys; neither the referral service nor two (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).

Also, 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 that 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.

While on-site, a sampling of two (2) fee-generating cases from 2012 were reviewed in order to determine compliance with 45 CFR Part 1609. For both cases, refusals by two (2) attorneys each were documented into the notes in the case management system. LSC funds supported 100% of the cost incurred for each case; a review of the Financial Statements disclosed that all attorneys' fees were credited 100% to the LSC fund.

There are no fiscal related recommendations or required corrective actions as the sampling evidenced compliance with 45 CFR Part 1609.

Finding 18: The on-site review evidenced that TRLA is in non-compliance with 45 CFR § 1610.5 (Notification), because TRLA failed to provide written notification to all funders that provided \$250.00 or more.

The purpose of 45 CFR § 1610.5 is to ensure that LSC recipients provide to all funders who provide \$250.00 or more to the organization, written notification of the prohibitions and conditions which apply to the use of those funds. No Recipient may accept funds of \$250.00 or more from any source, other than LSC, without providing written notification to that source. Section 1610.5(a) specifically states that "Except as provided in paragraph (b) of this section, no Recipient may accept funds from any source other than the Corporation (LSC), unless the Recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds."

The on-site review revealed that from January 1, 2010 through August 31, 2012, TRLA received funding from both, state and federal government agencies, foundations, law firms, others, and individuals. From interviews with the Executive Director, Chief Financial Officer and Development Director, it was unclear if TRLA was in violation of 45 CFR § 1610.5. Both the Executive Director and Chief Financial Officer stated that notification letters were sent out to all funding sources of \$250.00 or more. When asked to provide sample notification, the

Development Director made available a single letter for each year of the review period. The selected letters had been sent to individual donors, not necessarily for donations of \$250.00 or more, and lacked specific language explaining the LSC regulations that govern the funds. A copy of LSC program letter 96-3 was provided to the Development Director and two (2) days later, TRLA sent out a written notification to an individual donor who had given \$255.00. The written notification contained very specific language outlining the prohibitions and conditions that govern those funds. Additionally, the Chief Financial Officer was provided a list of funding sources that OCE's review team selected from the 2011 Audited Financial Statement. From that list, the Chief Financial Officer was unable to provide copies of notification letters sent to these funding agencies/sources.

Moreover, the Development Director indicated, in a telephone interview on September 26, 2012, that TRLA operates an on-line giving program which started in 2010 and on average generates \$400.00 per month, in mostly small denominations (*i.e.* \$20.00 and \$30.00) with the occasional donation of \$250.00. Monthly reports of the on-line giving are generated and the system sends out an automatic response to the donor acknowledging receipt of their donation but which does not include notification of LSC restrictions.

The on-site review evidenced that TRLA failed to send out notification letters to all non-LSC funders of \$250.00 or more. As a result of these discrepancies, the Draft Report required TRLA to ensure that all funding sources of \$250.00 or more receive the required written notification of the prohibitions and conditions that apply to those funds; and provide to OCE, written evidence of 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more. In its response to the Draft Report, TRLA indicated that TRLA's Development Director now ensures that all funding sources of \$250.00 or more receive the required written notification. In addition, TRLA provided documentation of 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 30-31 are closed.

Given the limited scope of OCE's review of compliance with 45 CFR Part 1610 during the on-site review, no findings, recommendations or required corrective actions are being issued regarding TRLA's overall compliance with 45 CFR Part 1610.

Finding 19: The on-site review evidenced that TRLA is in non-compliance with 45 CFR § 1612.10 (Recording and accounting for activities funded with non-LSC funds) because: (1) TRLA reimbursed one (1) participant a *de minimis* amount, using LSC funds, for travel costs while participating in legislative and rulemaking activities, and (2) TRLA does not maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities.

LSC's restrictions on lobbying and certain other activities, found at 45 CFR Part 1612, are designed to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. This part also provides guidance on when recipients may

participate in public rulemaking or in efforts to encourage State or local governments to make funds available to support recipient activities, and when they may respond to requests of legislative and administrative officials.

The LSC regulations, at 45 CFR § 1612.10, discuss recordkeeping and accounting for activities funded with non-LSC funds and state that:

- a. No funds made available by LSC shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.
- b. Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.
- c. Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6, together with such supporting documentation as specified by the LSC.

TRLA's policy notes that employees failing to comply with these regulations are subject to the disciplinary action set out in the current Collective Bargaining Agreement.

From the examination of documents and interviews with the Chief Financial Officer and Director of Human Resources, it was disclosed that TRLA engaged in legislative and rulemaking activities. While on-site, the program provided OCE copies of their semi-annual reports, that described their legislative activities with non-LSC funds pursuant to 45 CFR § 1612.6. Review of the semi-annual reports revealed that several attorneys participated in legislative activities during the period from January 1, 2010 thru June 30, 2012. The program was asked to provide time records for those attorneys by activity date, by time spent working on these activities, by funding source, and notes. Time records from the Client Tracking System were provided which independently tracked time spent on legislative activities by employee. Review of these time records revealed that one (1) participant's name that appeared on the semi-annual report had no corresponding time record. According to the Director Human Resources, this person was not an employee of TRLA and a revised semi-annual report was provided that included the Executive Director as the participant. TRLA also provided general journal entries along with supporting documentation (payroll allocation schedules) that showed non-LSC funds being used to pay the salaries of the participants in legislative activities in accordance with § 1612.10. However, the on-site testing also disclosed that, in one (1) instance, TRLA reimbursed a participant using LSC funds in the amount of \$16.00 for travel expenses (parking) while that person was engaged in legislative activities. This amount is *de minimis* in nature. However, it is in violation of 45 CFR § 1612.10 which states that no funds made available by LSC shall be used to pay for administrative overhead or related costs associated with any activity listed in 45 CFR § 1612.6. As a result of this discrepancy, the Draft Report required TRLA to transfer back to the LSC fund the amount of \$16.00. In its response to the Draft Report, TRLA indicated that, upon further review, only \$10.04 would be transferred back to LSC funds for travel expenses for one (1) staff member participating in legislative activities. The total amount claimed for the travel expenses in question was \$18.04. According to TRLA, eight (8) dollars of that expense was paid by a funding source other than LSC, leaving a balance of \$10.04 as being paid by LSC funds. TRLA

provided documentation indicating \$10.04 had been charged to LSC funds for travel expenses. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 32 is closed. However, within 30 days of this Reports release, TRLA should provide OCE with evidence that the \$10.04 in question was refunded to LSC account.

In addition, TRLA's system of maintaining separate recordkeeping and accounting for activities funded with non-LSC funds for legislative and rulemaking activities required improvement on. TRLA must record all expenditures and costs related to legislative and rulemaking activities, for each participant, by date, purpose, and related costs (salaries, travel, parking, etc.) on a separate schedule pursuant to 45 CFR § 1612.10. As a result of this discrepancy, the Draft Report required TRLA to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities. In other words, TRLA must maintain, on a separate schedule, all costs associated with legislative and rulemaking activity (by participant's name, date, purpose, expense category, amount, total, *etc.*). In its response to the Draft Report, TRLA indicated that schedules are now currently and correctly maintained and that TRLA will continue to do so. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 33 is closed.

Finding 20: The on-site review evidenced that TRLA is in compliance with 45 CFR § 1627.4 (Membership dues or fees).

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.⁸⁵ 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 \$25,000.00 or less for the direct provision of legal assistance to eligible clients.

Additionally, 45 CFR § 1627.4 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.

⁸⁵ 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.

Subject to funding restrictions, TRLA pays on behalf of (or will reimburse) individual permanent staff attorneys the following bar membership fees incurred after an employee has been hired. These fees must be reimbursed by the employee through a payroll deduction if the employee resigns from TRLA within one year of licensing:

- (1) A single set of fees required to become licensed to practice law in the State of Texas, and/or in any other jurisdiction required by TRLA, including bar application fees and bar review course fees. These fees are payable only once.
- (2) All required annual fees of the State Bar of Texas and/or other states in which the attorney must practice on behalf of TRLA clients, including the Poverty Law Section membership and two additional section memberships at the employee's discretion, and local bar membership fees.
- (3) Special appearance fees or initiation fees made necessary by an attorney's appearance in a specific case being handled by TRLA in a trial or appellate court of another jurisdiction.

Subsequent to the on-site review, TRLA provided copies of invoices from the Secretary of State of Texas for the time period 2010 through 2012. An examination of the invoices and interviews with the Chief Financial Officer evidenced that TRLA paid mandatory Texas bar dues using LSC funds as indicated by funding code 01 on the chart of accounts, and paid non-mandatory Texas bar dues using non-LSC funds as indicated by funding code 15 on the chart of accounts. It is evidenced from the above discussion that TRLA is in full compliance with the provisions of 45 CFR § 1627.4.

There are no fiscal related recommendations or required corrective actions as the sampling evidenced compliance with 45 CFR § 1627.4.

Finding 21: The on-site review evidenced that TRLA has adequate internal control systems in place for providing fiscal oversight by the Board and has demonstrated its ability to exercise oversight responsibilities, and proper segregation of duties whereby the board and management carry out these assigned responsibilities.

LSC's accounting guidelines regarding responsibilities of the financial oversight committee or committees requires each LSC Recipient governing body to assume fiduciary responsibility by establishing a financial oversight committee or committees. *See* AGLR, § I-7 (explaining the responsibilities of the financial oversight committee)

The financial oversight committee(s) should, at a minimum (subject to any requirements of state law) engage in all of the following responsibilities: revise budgets and make recommendations to the full board of directors; review monthly management reports (including budgeted and actual income and expenses, variances, and a statement of cash on hand) with the Chief Financial Officer, Controller and/or CPA; review accounting and control policies and makes

recommendations for changes and improvements; review the audited financial statements, management letter, and senior staff's response with staff and auditor; regularly review and makes recommendations about investment policies; coordinate board training on financial matters; and acts as a liaison between the full board and staff on fiscal matters.

The AGLR also recommends that a program have an Audit Committee whose role (subject to any requirements of state law) includes: hiring the auditor; setting the compensation of the auditor; overseeing the auditor's activities; setting rules and processes for complaints concerning accounting and internal control practices; reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing and providing assurances of compliance to the full board; and ensuring the Recipient's operations are conducted and managed in a manner that emphasizes ethical and honest behavior, compliance with applicable laws, regulations and policies, effective management of the recipient's resources and risks, and accountability of persons within the organization.

From an examination of TRLA's employee handbook, accounting policies and procedures manual, board minutes, budgets, Audited Financial Statements, "Internal Control Worksheet" (as completed by TRLA), and interviews with staff, it was determined that, in most cases, the program has adequate internal controls.

Review of TRLA's policies revealed that the program has an up-to-date employee handbook and Accounting Policies and Procedures Manual that outlines the program's policies and procedures as these relate to adequate internal controls in providing fiscal oversight by the Board of Directors Management, and it has demonstrated its ability in exercising oversight responsibilities. Both manuals were revised and approved (to incorporate policy changes) by TRLA's Board of Directors during their annual board meeting held on September 22, 2012.

As a result of this finding, the Draft Report required TRLA's Board of Directors, in accordance with its internal policies, to ensure that the Executive Body is reviewing all PAI contracts (*See* Finding No. 6 discussing segregation of duties in executing PAI contracts). In its response to the Draft Report, TRLA indicated that the internal policies have never included "executive body" review of individual PAI contracts. The Executive Director is the person designated by the Board of Directors to execute all contracts on behalf of TRLA, including PAI contracts. TRLA noted that the contracts and expenditures pursuant to the contracts are reviewed by the independent auditor, who reports to the Board of Directors. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 33 is closed.

Additionally, the Draft Report required TRLA's Board of Directors, to establish internal control procedures that would include, at minimum, reviewing all credit card purchases made with a TRLA credit card by upper Management to determine if they are supported with adequate documentation, *i.e.* receipts. In its response to the Draft Report, TRLA made references to the credit card policy adopted by the TRLA's Board of Directors on June 8, 2013, which is included in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 34 is closed.

IV. RECOMMENDATIONS⁸⁶

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

Finding No. 1: Internal controls over personnel and payroll

1. Incorporate some type of notification procedure that would provide notice to an employee's supervisor (*i.e.* through email or memo) as to the employee's start or hire date. This control measure will inform supervisors when (new, current, or former) employees are scheduled to start work and help alleviate any discrepancies between start and return to work dates as indicated on the personnel change form and time record; and
2. Periodically verify the names of the employees listed on its employee staff listing to the names of the employees listed on its payroll register.

TRLA provided no response to these recommendations.

Finding No. 2: Timekeeping requirements

3. Provide training to all staff regarding LSC and TRLA requirements regarding timekeeping and provide as part of its comments to the Draft Report, the date said training occurred (or a date certain when said training will occur), and a copy of the staff attendance sheet, along with any materials provided; and
4. Periodically send out notification reminders to employees of the timekeeping requirements.

TRLA provided no response to these recommendations.

Finding No. 6: Procedures and internal controls regarding legal consultants/contract services

5. Conduct an internal risk assessment in order to identify areas in its PAI contract process that require additional internal controls, *i.e.* ensuring that all contract modifications are memorialized in an Addendum signed by the required parties and reviewed by staff for irregularities; periodically conducting a review of all active PAI contracts by staff members who take no part in the approval process; and implementing an automatic Board of Director review through the Audit Committee once payments issued to a vendor, consultant, or PAI reach a threshold amount.

⁸⁶ 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.

TRLA provided no response to this recommendation.

Finding No. 7: Procedures and internal controls regarding travel

6. Ensure staff compliance with this procedure by conducting staff training that would, at minimum, confirm the importance of why prior written approval for travel must be obtained, explain why the written authorization should be retained, and how it should be maintained.

TRLA provided no response to this recommendation.

Finding No. 9: Procedures and internal controls regarding cash receipts

7. Have the employee who is responsible for posting the cash receipts to the cash receipts log, verify the checks posted to the log are in agreement with the checks received for that day;
8. Record all types of cash receipts to its cash receipts log (excluding client trust and petty cash receipts). These types of cash receipts should be recorded to a cash receipt log, where the deposits are specifically designated for the client trust and petty cash accounts. This best practice will help prevent the commingling of deposits as well as separating client trust receipts and petty cash receipts from the general operating fund receipts; and
9. Further strengthen its cash receipts policy by providing notification through signage to walk-in clients and/or applicants that they are entitled to a receipt for all cash submitted to TRLA.

TRLA provided no response to these recommendations.

Finding No. 10: Procedures and internal controls regarding bank reconciliations

10. Explain how management intends to implement mitigating controls in an effort to maintain the maximum allowed insured limits of \$250,000.00 set by FDIC and include documentation evidencing same as an attachment to its Draft Report; and
11. Management should consult with its audit or finance committee to determine what, if any, mitigating controls need to be implemented to help alleviate this problem.

TRLA provided no response to these recommendations.

V. REQUIRED CORRECTIVE ACTIONS

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

Finding No. 1: Internal controls over personnel and payroll

1. As to the Director of Litigation's payroll records regarding his leave of absence, TRLA must determine this employee's actual return date from his leave of absence (August 7, 2012 or August 13, 2012) and:
 - a. If there is a discrepancy between the actual return date and the date listed on his personnel change form, TRLA must determine whether this employee's payroll records (*i.e.* vacation and sick leave records, pay stub) are accurate and correct any inaccuracies through proper accounting procedures as outlined in TRLA's accounting manual;
 - b. Determine whether this employee was overpaid or underpaid for that payment cycle and take appropriate measures to correct any errors; and
 - c. Include, in its comments to the Draft Report, a statement explaining how this required corrective action was implemented and provide all supporting documentation;

In its response to the Draft Report, TRLA indicated that the Director of Litigation was not paid for the work performed on August 7, 2012, and that his correct return date was August 13, 2012. Based on TRLA's response to this required corrective action, and OCE review of same, required corrective action nos. 1(a-c) are closed.

2. As to the TRLA employee with the name change, TRLA must include in its comments to the Draft Report verification that the name on the payroll register and employee staff listing is one in the same by providing a copy of the employee W-2 statement for 2012.

In its response to the Draft Report, TRLA verified that the name on the payroll register and the name on the employee staff listing are the same by including a copy of the employee's W-2 statement for 2012 as part of its response. Based on TRLA's response to this required corrective action, and OCE review of same, required corrective action no. 2 is closed.

Finding No. 2: Timekeeping requirements

3. Pursuant to 45 CFR Part 1635, ensure that all attorney and paralegal time spent working on cases, matters, and supporting activities is accounted for by time records which record the amount of time by date and in increments not greater than one-

quarter of an hour which comprise all of the efforts of the attorney and paralegal for which compensation is paid by TRLA; and

4. Enforce its timekeeping policy, which states that “[f]ailure to comply with these requirements may result in disciplinary action.”

In its response to the Draft Report, TRLA indicated that attorneys, paralegals, and other staff working on cases are required to document time spent on cases, matters, and supporting activities through its timekeeping system. In addition, TRLA indicated that it enforces its timekeeping policies by periodic reminders to all staff via telephone calls, email, and at staff conferences, as well as specific admonitions and disciplinary warnings to staff members who fail to log their time into the case management system. Based on TRLA’s response to this required corrective action, and OCE review of same, corrective action nos. 3 and 4 are closed.

5. Pursuant to 45 CFR § 1635.3(d) , include on all future part-time certification forms the names of all part-time employees (attorneys and paralegals) who also work for an organization which engages in restricted activities; and
6. Submit, as part of its comments to the Draft Report, a most recent copy of this certification.

In its response to the Draft Report, TRLA disagreed with this Finding and asserted that it is not required to obtain certifications for part-time attorneys who also maintain a part-time private law practice. TRLA stated that interpretation of the regulation has never been made generally known to Recipients, and they believed that the interpretation in the Draft Report is erroneous. TRLA argued that the certification requirement applies only to attorneys or paralegals who also work “part-time for an organization that engages in restricted activities,” However, TRLA argued, the term “organization” is not defined in 45 CFR Part 1635; the common usage of that term does not include a private law practice. Where the Corporation has sought to identify private law firms or practitioners, it has used other terminology, e.g., “person or entity” in 45 CFR § 1610.7. According to TRLA an “organization” in this context is a non-profit corporation or non-governmental entity that, at least in part, engages in activities that are restricted under LSC regulations. TRLA indicated that the Draft Report ignores the plain meaning of the term and, without citing any authority, asserted that “organization” includes a private law practice, whether operating as a sole practitioner or as a law firm. TRLA’s response stated that this would be an overly broad interpretation of the term “organization” that would require obtaining quarterly certifications from 119 PAI contract attorneys. However, TRLA indicated that if LSC officially interprets the term “organization” in Part 1635 to include private practitioners, then it would obtain the 45 CFR § 1635.3(d) certifications for part-time attorneys who also maintain a private law practice.

Additionally, this requirement is imposed on part-time employees of Recipient’s, not PAI attorneys, so TRLA’s argument does not make sense. PAI attorneys are not ‘part-time’ employees. Although, TRLA disagreed with this corrective action, documentation was provided by TRLA, showing the most recent copies of certification of attorneys who worked part-time during the first quarter of 2013 (for TRLA), and part-time for another organization.

Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 5 and 6 are closed. However, LSC will take TRLA's argument under further review and respond via separate correspondence.

Finding No. 4: Procedures and internal controls regarding procurements

7. Establish acquisition policies and procedures that ensure required LSC prior approvals are obtained in accordance 45 CFR § 1630.5 and the PAMM §§ 3 and 4 and include copies of same as attachments to its response to the Draft Report.

In its response to the Draft Report, TRA indicated that its Property Acquisition Policy was approved by its Board of Directors on June 8, 2013. In addition, procedures for ensuring required approvals have been added to its Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE's review of the Board approved policy, required corrective action no. 7 is closed.

8. As to the acquisition made on July 29, 2010 totaling \$11,635.05, pursuant to the PAMM § 3, TRLA must:
 - a. Provide documentation demonstrating that LSC prior approval was obtained for this acquisition as attachments to its response to the Draft Report; or
 - b. Provide documentation demonstrating that that the entire cost was not charged to the LSC fund account as attachments to its response to the Draft Report; or
 - c. Transfer back over to the LSC fund account all monies exceeding \$10,000.00 relating to the items purchased as noted on the purchase order where LSC funds were used (*See* 45 CFR § 1630.5) and include documentation evidencing same as attachments to its response to the Draft Report; or
 - d. Seek LSC's determination that the use of LSC funds totaling \$11,635.05 was reasonable and necessary and that TRLA followed the requirements of the PAMM when determining which vendor to choose, despite not requesting approval. Include documentation evidencing same as attachments to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated the purchase of the three (3) items was for the improvement of its existing voice and data transmission systems. Although the items were purchased from the same vendor on the same day, TRLA's understanding of LSC's regulation and PAMM is that separate items should not be aggregated for purposes of determining whether LSC permission is needed. Prior authorization from LSC was not sought because two (2) related items were less than the \$10,000.00 threshold under 1630.5, as was the unrelated third item. Each item could have been purchased from a different vendor on a different occasion. Each item was an independent, unrelated improvement to the program's VoIP telephone system or its data transmission systems. The upgrades in 2010 were for a Cisco Call Manager Subscriber and

Publisher, and a Cisco Unified Communication Express unit. The Subscriber and Publisher should be treated as related items, each costing \$3,878.35, with a combined price of \$7,756.70. These two components control all voice and mail communications, including paging and toll bypass on over 200 phone sets in 12 branch offices. The Cisco Unified Communication Express unit directs calls within the centralized telephone intake system, the Telephone Access to Justice (“TAJ”) hotline system. It is a stand-alone system, not related to, or a component of, the general telephone system among the branch offices. The Express unit also cost less than \$10,000.00. In TRLA’s opinion, the “prior approval” requirement on this matter was not violated because § 1630.5(b)(2) states, “Purchases and leases of equipment, furniture, or other personal non-expendable property, if the purchase price of any individual item or property exceeds \$10,000.00;” (emphasis added). Additionally, the PAMM states in §3 “Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over \$10,000.00, but not for aggregate acquisitions of over \$10,000.00.” There were two (2) related components purchased for a combined price that was less than \$10,000.00 and one (1) unrelated component that also was less than \$10,000.00. Based on TRLA’s response to this required corrective action, and OCE review of same, corrective action no. 8 is closed.

9. As to the construction project expenditure, totaling \$28,500.00, TRLA, pursuant to 45 CFR § 1630.5(b)(4) and PAMM § 4(f), must:
 - a. Provide documentation that LSC prior approval was obtained for this expenditure as attachments to its response to the Draft Report; or
 - b. Provide documentation demonstrating that this expenditure was not a capital improvement as defined by the PAMM § 2(c) as attachments to its response to the Draft Report; or
 - c. Provide documentation demonstrating that the amount exceeding \$10,000.00 was not charged to the LSC fund account as attachments to its response to the Draft Report; or
 - d. Seek LSC’s determination that the use of LSC funds in excess of \$10,000.00 was reasonable and necessary and that TRLA followed the requirements of the PAMM when determining which vendor to choose, despite not requesting prior approval and include documentation evidencing same as an as attachment to its response to the Draft Report; or
 - e. Transfer back over to the LSC fund account all monies in excess of \$10,000.00 relating to this expenditure where LSC funds were used and provide documentation evidencing same as attachments to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated that Hurricane Alex in June 2010 and a series of subsequent thunderstorms in the Coastal Bend area of Texas caused extensive flooding to TRLA offices in Corpus Christi and Sinton. TRLA entered into an agreement with Caleb

Construction in July of that year to reseal and repair an external wall in the Corpus Christi Pueblo Street office for a total price of \$10,014.00, and also retained the same firm to make flooding repairs to the Sinton office in San Patricio County for \$2,986.00. TRLA indicated that it inadvertently failed to seek approval for the repairs to the Corpus office, which exceeded the threshold under 45 C.F.R. §1630.5(b)(4) by \$14.00. TRLA did not believe that it was necessary to seek LSC approval for the separate repairs to the Sinton office, which were substantially under \$10,000.00.

Subsequently, TRLA determined that the flooding had caused additional and previously undetected damage to the Corpus Christi office. The moisture in the carpet and flooring was creating the growth of mold, and it was necessary to contract with Caleb again to remove and replace the carpet and to make additional flooring repairs. TRLA agreed to the submitted proposal for \$15,500.00 on September 21, 2010, and made the payment to the construction company on October 7, 2010. TRLA indicated that it unintentionally failed to submit a request to LSC for prior approval for this expenditure and will reimburse the LSC account for the \$5,500.00 in excess of the threshold. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 9 will remain open, pending a transfer from TRLA's non-LSC funds to LSC funds in the amount of \$5,500.00. TRLA is directed to provide documentation of this transfer, to OCE, within 30 days of the release of this Final Report.

Finding No. 5: TRLA's PAI efforts

10. Develop and establish written policies and procedures documenting its PAI methodology calculation and include documentation evidencing same as attachments to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated that its PAI methodology calculation has been added to its Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 10 is closed.

Finding No. 6: Procedures and internal controls regarding legal consultants/ contract services

11. Review all current PAI contracts for 2010 through 2013 for accuracy, *i.e.* ensure that the scope of the contact is clearly defined, properly executed by authorized persons and relevant parties, and all contract terms and modifications are notated on the contract with appropriate authorizations and/or that addendums are attached memorializing the modifications with appropriate authorizations. Where TRLA finds contracts with inaccurate terms, it must take appropriate measures in accordance with its internal formal policies to correct the issues, *i.e.* draft an addendum to the contract with appropriate authorizations and include in its response to the Draft Report details regarding each issue(s) discovered (if any) and how the issue(s) was (were) remedied;

In its response to the Draft Report, TRLA indicated all such contracts were reviewed and no issues were discovered. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 11 is closed.

12. Review the payments made to PAI attorneys from 2010 through 2013 to ensure that all payments were properly issued in accordance with the payment schedule that was in effect at the time the contract was executed and where issues are noted, take appropriate measures to correct the issue, *i.e.* in the case of underpayment, issue the amount owed and include in its response to the Draft Report details explaining the issue(s) discovered (if any) and how the issue(s) was remedied;

In its response to the Draft Report, TRLA indicated all such contracts were reviewed and no issues were discovered. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 12 is closed.

13. To the extent that any of the noted issues in this Finding alter its PAI requirement for fiscal year 2011, TRLA must include in its response to the Draft Report the revised amount or a statement indicating that the amount is unchanged;
14. Review all active agreements for legal consultants to ensure that said agreements are correctly memorialized and that the agreements contain accurate terms with appropriate authorizations. Where TRLA finds agreements with inaccurate terms and/or improper authorizations, it must take appropriate measures in accordance with its internal policies to correct the issues and include in its response to the Draft Report details explaining the issue(s) discovered and how the issue(s) was remedied;

In its response to the Draft Report, TRLA indicated that no issues were discovered. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 13 and 14 are closed.

15. For each consultant agreement entered into after September 30, 2012, TRLA must include in its response to the Draft Report, a statement confirming that a determination has been made that these services are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, who is responsible for making this determination and how such a determination will be reached;
16. As TRLA indicated that the Oregon based attorney No. 1 who does migrant work is not a PAI attorney, TRLA must include in its response to the Draft Report, a properly executed contract for this individual and, in accordance with its internal policies, include a determination that the services offered are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, indicating who made this determination and how this determination was made.

In its response to the Draft Report, TRLA indicated that no new consultant agreements have been entered into in fiscal year 2013. TRLA, further explained that the legal consultant in question is an experienced and respected attorney in the practice of law for migrant and seasonal farm

workers. TRLA provided argument that the consultants work with TRLA was invaluable and could not be performed by existing staff including his advice and counsel on matters of migrant legal services delivery systems. TRLA argued that there was no one on staff who had comparable experience and litigation talents who could perform such an advanced level of services for the program. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 15-16 are closed.

17. As to the fee for service arrangement where total issued payments to an Oregon based attorney No. 2 that were in excess of \$25,000.00, TRLA must submit all relevant documentation establishing:
 - a. This fee for service arrangement is not a subgrant as defined by 45 CFR § 1627.2(b); or
 - b. That LSC did approve this subgrant pursuant to 45 CFR § 1627.3(b); or
 - c. That LSC did not respond to the request for approval within 45 days and that LSC was notified of said failure and did not respond within seven (7) days of the receipt of such notification; or
 - d. TRLA may opt to confirm that this is a sub-grant pursuant to 45 CFR § 1627.3(b) and transfer back over to the LSC fund all monies exceeding \$25,000.00 relating to the fee for service contract (in 2010 for \$51,853.62 and in 2012 for \$53,950.30) where LSC funds were used and include documentation evidencing same in its response to the Draft Report. *See* 45 CFR § 1630.2(g)(1).

In its response to the Draft Report, TRLA indicated that for fiscal year 2010 (October 1, 2009 – September 30, 2010) payments issued to Oregon based attorney No. 2 in the amount of \$43,867.77 do not constitute a subgrant as defined by 45 CFR § 1627.2 (b) because TRLA charged only \$25,000.00 to LSC. TRLA provided documentation showing a journal entry, number 990, dated September 30, 2010, in the amount of \$18,867.77 that was entered and reclassified to another funding source. As for fiscal year 2012, TRLA provided documentation showing a transfer back to the LSC fund, all monies exceeding \$25,000.00, relating to the fee for service contract for payments issued to Oregon based attorney No. 2. According to TRLA, an adjusting entry for \$28,041.22 will be entered into TRLA's general ledger for the month of June 2013. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 17 is partially closed. TRLA is required to submit, within 30 days of the release of this Final Report, evidence of this adjusting entry.

Finding No. 7: Procedures and internal controls regarding travel

18. TRLA must establish procedures that retain/maintain records documenting prior written approval for local and out-of-town travel for all staff and include as an attachment documentation evidencing same in its comments to the Draft Report.

In its response to the Draft Report, TRLA provided documentation indicating that procedures requiring prior written approval being added to the Accounting and Procedures manual. Based

on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 18 is closed.

Finding No. 8: Regarding cash disbursements/credit cards/electronic banking

19. As to charge/credit card use, TRLA's policy must establish, at minimum, procedures that require:

- a. Submission of proper and adequate supporting documentation for all employees including the Executive Director. TRLA should include the policy as an attachment to its response to the Draft Report;

In its response to the Draft Report, TRLA provided documentation indicating that the Credit Card Policy had been adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, being added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 19 (a) is closed.

- b. Proper segregation of duties with careful consideration and adequate mitigation given to the review process when it would require a subordinate employee reviewing a senior employee's charge/credit card statements.

In its response to the Draft Report, TRLA provided documentation indicating that the Credit Card Policy had been adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, being added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 19(b) is closed.

20. Provide documentation as an attachment to its Draft Report substantiating why the \$20,800.00 of charges that were not supported with adequate documentation should be allowed;

In its response to the Draft Report, TRLA indicated that they had reviewed the relevant credit card charges reviewed by OCE during the identified period that were not supported by the kind or type of documentation that appears to be preferred by the OCE Draft Report. All of the credit card charges in question were incurred by the Executive Director. According to TRAL, the Executive Director provides the same detail on charges as would be submitted on TRLA's various reimbursement forms (out-of-town travel, local travel, and out-of-pocket expenses). The Executive Director does not request reimbursement for mileage, per diem, meal and entertainment, and similar program-related expenses, other than those charged to the Am Ex card. Since he does not use forms to seek reimbursement, the Executive Director furnishes a detailed explanation of each expense on the AmEx invoice before payment is made, such as the business purpose of travel or meal expenses that involve attorney recruitment or staff meetings. The independent auditor has agreed that this practice provides adequate documentation of the expenses, and in the course of his audits he has reviewed all of the expenses charged by the Executive Director. According to TRLA, the independent auditor reviews the Executive Director's charges with the Finance Committee and it is reported to the Board of Directors. That

practice is now memorialized in writing through the Credit Card Policy adopted by the Board of Directors on June 8, 2013. During the period from January 1, 2010 through September 30, 2012, TRLA identified \$20,709.29 in charges made to the AmEx card by the Executive Director that were documented under the policy and practice described here. TRLA provided documentation to support that statement. Review revealed that each of the charges was reasonably and necessarily incurred for legitimate TRLA purposes and should be allowed. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 20 is closed.

21. Develop written policies and procedures that contain internal controls for electronic banking. The same should be included as attachments to its response to the Draft Report.

In its response to the Draft Report, TRLA provided an Electronic Banking Policy that was adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, that had been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 21 is closed.

Finding No. 10: Procedures and internal controls regarding bank reconciliation

22. TRLA must develop bank reconciliation written policies, which it should attach to its response to the Draft Report, and which at minimum include:
 - a. How old checks have to be before they are considered outstanding, stale dated or voided;
 - b. A voided check policy that is consistent and uniform with the number of days denoted on the check;
 - c. Procedures to notify financial institutions in writing and/or by telephone when there is a follow-up to any exception identified in the bank statement reconciliation;
 - d. The requirement that the Chief Financial Officer and designated preparers to sign and date bank statement reconciliations for which they are responsible for preparing, reviewing, and approving; and
 - e. The requirement that Management review, sign, and date all bank statements indicating review and approval prior to their delivery to the designated preparers for reconciliation.

In its response to the Draft Report, TRLA provided supporting documentation indicating that TRLA's bank reconciliation policies and procedures had been updated in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 22 is closed.

23. As to bank statement reconciliations and follow-up and bank closings TRLA must:

- a. Investigate its prolonged outstanding or stale dated checks and resolve them in a timely manner and include documentation evidencing same as an attachment to its response to the Draft Report;

In its response to the Draft Report, TRLA indicated that the August 31, 2012 bank statement reconciliation for the general operating fund account had seven (7) stale checks that had been outstanding for over 90 days. Six (6) checks were voided on 9/31/2012, the end of the fiscal year. Prior policy was to void stale checks at the end of the fiscal year. The remaining check was payable to the Social Security Administration and is still under investigation. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 23(a) will remain open, pending completion of the investigation by TRLA of the last remaining check. TRLA should submit an update to OCE within 30 days from the issuance of this Final Report.

- b. Revise its Client trust and Petty cash bank statement reconciliation forms to include the date(s) that the check(s) was issued or disbursed and include documentation evidencing same as an attachment to its Draft Report;

In its response to the Draft Report, TRLA provided supporting documentation indicating that the Client Trust and Petty Cash Bank Statement Reconciliation forms have been revised to include the date(s) that the checks(s) were issued or disbursed. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 23(b) is closed.

- c. Verify from its bank statement reconciliations that all banks have been notified of any banking errors and include documentation evidencing same as an attachment to its Draft Report; and
- d. Demonstrate that any bank account closings in 2012 received Board approval (and if not TRLA must notify its Board of the closing), and include documentation evidencing same as an attachment to its Draft Report.

In its response to the Draft Report, TRLA indicated that no banking errors were discovered and that TRLA notifies its Board of Directors at regular board meetings of any bank account closings or signature changes, and provided supporting documentation. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 23(c-d) are closed.

Finding No. 11: Accounting procedures and internal controls regarding petty cash

24. Demonstrate that they have the required signatory requirements for each of the 16 branch offices and provide documentation evidencing same as an attachment to its Draft Report. As stated in the accounting policies and procedures manual, TRLA should have as signatory's two (2) attorneys and two (2) secretaries.

In its response to the Draft Report, TRLA provided supporting documentation indicating procedures have been revised in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 24 is closed.

Finding No. 13: Procedures and internal controls regarding record retention and periodic destruction policy

25. Develop written policies and procedures that document record retention and periodic destruction policies consistent with the requirements of AGLR, App. II (outlining the retention times for nonprofit records); also *see* "LSC Grant Assurances for Calendar Year 2012" No. 17 (requiring Recipients to maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant).

In its response to the Draft Report, TRLA provided supporting documentation indicating that TRLA has a written Document Retention Policies, adopted by Board of Directors on December 21, 2012, that has been added to TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 25 is closed.

Finding No. 15: Procedures and internal controls regarding prohibited purchases of alcoholic beverages

26. Transfer back to LSC, any LSC funds that were used to purchase alcohol beverages in 2010 through 2012 and provide documentation evidencing same as an attachment to its Draft Report.

In its response to the Draft Report, TRLA indicated that their policy prohibits the expenditure of program funds for alcoholic beverages and refuses to reimburse any employee for such prohibited expenses. TRLA also indicated that after an exhaustive search, it was unable to identify any employee expense reimbursement forms or receipts indicating a reimbursement for alcoholic beverages during the indicated period. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 26 is closed.

Finding No. 16: Procedures and internal controls regarding cost allocation

27. As to the cost allocation methodology for TRLA's Basic Field-General and in accordance with the OIG Recommendation, TRLA must:
 - a. Revise its Cost Allocation Policy by making it more defined and grant specific (*i.e.* detailing the methods used to allocated costs for each natural expense line item, by grant);

In its response to the Draft Report, TRLA has found after reviewing the cost allocation policy, that it meets OIG's guidelines and that its cost allocation policy is defined and grant specific. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 27(a) is closed.

- b. Obtain Board of Directors approval of the revised Cost Allocation Policy;
and
- c. Provide documentation evidencing same (nos. 1-2) as an attachment to its response to the Draft Report.

In its response to the Draft Report, TRLA indicated the cost allocation policies and procedures as approved by the TRLA Board of Directors on September 22, 2012 are contained in the TRLA Accounting Policies and Procedure Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 27(b-c) is closed.

28. As to the Public Defender Program's fair share of front office expense and in accordance with the OIG Recommendation, TRLA :

- a. Should consult with its IPA in determining for each front office expense (see b through i), the amount of LSC funds (if any) that were used to subsidize the Public Defender Program in fiscal years 2010 through 2012;

In its response to the Draft Report, TRLA indicated that they have consulted their IPA and will consult with them at the end of fiscal year 2013. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(a) is closed.

- b. Must transfer from non-LSC funds to the LSC fund balance all monies identified where LSC funds were used to subsidized the Public Defender Program;

In its response to the Draft Report, TRLA has provided supporting documentation indicating that it has used the allocation formula suggested by OCE in its Draft Report, and has made an adjusting entry from the unrestricted account to the LSC fund account in the amount of \$5,710 for fiscal years 2010 through 2012. The amount transferred covers indirect costs of the operation of the central administrative office attributable to the public defender programs. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(b) is closed.

- c. Must follow its current policy and allocate a fair share of front office costs to the Public Defender Program for fiscal year 2013 and forward;

In its response to the Draft Report, TRLA will continue to follow its current policy and allocate a fair share of indirect cost to the Public Defender Program for fiscal year 2013 and forward. Based on TRLA's response to this required corrective action, and OCE review of same,

corrective action no. 28(c) is closed.

- d. Must determine if LSC funds are used to subsidize any other programs and take the appropriate steps in resolving these occurrences;

In its response to the Draft Report, TRLA indicated that, after review, it determined that no LSC funds were used to subsidize any other non-LSC-eligible programs. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(d) is closed.

- e. Must demonstrate that a fair share of front office expense was allocated to the Public Defender Program and include in its response to the Draft Report a summary explaining how.

In its response to the Draft Report, TRLA disagreed that a fair share of "front office expense" was not allocated, although they made the entry to TRLA's general ledger from unrestricted to LSC funds in the amount of \$5,710 for fiscal years 2010 through 2012. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 28(e) is closed.

29. As to the cost allocation methodology for TRLA's Migrant grant, TRLA must:

- a. Accurately account for direct and indirect costs charged to its SMLS program by individual service area;
- b. Prepare a general journal for all transfers between LSC Basic-Field, LSC Texas-Migrant, and LSC SMLS Migrant (by expense category and by service area); and
- c. Until further notice, use non-LSC funds to offset any deficit spending in SMLS.

In its response to the Draft Report, TRLA argued that an effective, efficient migrant program can only be operated in the manner that TRLA has operated the Southern Migrant Legal Services program ("SMLS"), pooling the seven grants to operate on a joint, regional basis. TRLA requested that the Corporation permit TRLA to pool its migrant grants to operate an integrated, regional migrant delivery system in Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee and Kentucky.

After reviewing information provided by TRLA, LSC determined to combine all seven (7) migrant service areas into one (1) area for competition purposes. Notice of that action was published on December 26, 2013.

Based on the actions taken by LSC, corrective action No. 29(a-c) are closed.

Finding No. 18: Procedures and internal controls regarding donor notification letters

30. Ensure that all funding sources of \$250.00 or more receive the required written notification of the prohibitions and conditions that apply to those funds; and
31. Provide to OCE, with its comments to the Draft Report, written evidence of 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more.

In its response to the Draft Report, TRLA indicated that TRLA's Development Director now ensures that all funding sources of \$250.00 or more receive the required written notification. In addition, TRLA provided documentation of 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action nos. 30-31 are closed.

Finding No. 19: Procedures and internal controls regarding recording and accounting for activities funded with non-LSC funds

32. Transfer back to the LSC fund, the *de minimis* amount of \$16.00 related to the reimbursement for travel expenses, for one (1) staff member's participation in legislative activities;

In its response to the Draft Report, TRLA indicated that, upon further review, only \$10.04 would be transferred back to LSC funds for travel expenses for one (1) staff member participating in legislative activities. The total amount claimed for the travel expenses in question was \$18.04. According to TRLA eight (8) dollars of that expense was paid by a funding source other than LSC, leaving a balance of \$10.04. TRLA provided documentation indicating \$10.04 had been charged to LSC funds for travel expenses. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 32 is closed. However, within 30 days of this Reports release, TRLA should provide OCE with evidence that the \$10.04 in question was refunded to LSC account.

33. Maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities. In other words, TRLA must maintain, on a separate schedule, all costs associated with legislative and rulemaking activity (by participant's name, date, purpose, expense category, amount, total, etc.).

In its response to the Draft Report, TRLA indicated that schedules are now currently and correctly maintained and that TRLA will continue to do so. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 33 is closed.

Finding No. 21: Procedures and internal controls regarding fiscal oversight by Board

34. TRLA's Board of Directors, in accordance with its internal policies, must ensure that the Executive Body is reviewing all PAI contracts (*See Finding No. 6, discussing segregation of duties in executing PAI contracts*);

The Draft Report required TRLA's Board of Directors in accordance with its internal policies, to ensure that the Executive Body is reviewing all PAI contracts (*See* Finding No. 6 discussing segregation of duties in executing PAI contracts). In its response to the Draft Report, TRLA indicated that the internal policies have never included "executive body" review of individual PAI contracts. The Executive Director is the person designated by the Board of Directors to execute all contracts on behalf of TRLA, including PAI contracts. TRLA noted that the contracts and expenditures pursuant to the contracts are reviewed by the independent auditor, who reports to the Board of Directors. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 34 is closed.

35. TRLA's Board of Directors must establish internal control procedures that would include, at minimum, reviewing all credit card purchases made with a TRLA credit card by the Executive Director to determine if they are supported with adequate documentation, *i.e.* receipts.

The Draft Report required TRLA's Board of Directors to establish internal control procedures that would include, at minimum, reviewing all credit card purchases made with a TRLA credit card by upper Management to determine if they are supported with adequate documentation, *i.e.* receipts. In its response to the Draft Report, TRLA made references to the credit card policy adopted by the TRLA's Board of Directors on June 8, 2013, which is included in TRLA's Accounting Policies and Procedures Manual. Based on TRLA's response to this required corrective action, and OCE review of same, corrective action no. 35 is closed

TEXAS RIOGRANDE LEGAL AID, INC.

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June 28, 2013

Ms. Lora Rath, Director
Office of Compliance and Enforcement
Legal Services Corporation
3333 K Street NW, Third Floor
Washington, D. C. 20007-3522

Dear Ms. Rath:

Enclosed please find TRLA's Response to OCE's Draft Report for the on-site Focused Internal Control Review of TRLA.

If there are any questions, please do not hesitate to let me know.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

A handwritten signature in black ink that reads 'D G. Hall'.

David G. Hall
Executive Director

enclosures: as noted

The following represents Texas RioGrande Legal Aid's (TRLA's) response to the 21 findings listed in LSC's Draft Report for the on-site Fiscal Internal Control Review of TRLA, which took place from September 24-27, 2012:

V. REQUIRED CORRECTIVE ACTIONS

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

Finding No. 1: Internal controls over personnel and payroll

1. As to the Director of Litigation's payroll records regarding his leave of absence, TRLA must determine this employee's actual return date from his leave of absence (August 7, 2012 or August 13, 2012) and:
 - a. If there is a discrepancy between the actual return date and the date listed on his personnel change form, TRLA must determine whether this employee's payroll records (*i.e.* vacation and sick leave records, pay stub) are accurate and correct any inaccuracies through proper accounting procedures as outlined in TRLA's accounting manual;
 - b. Determine whether this employee was overpaid or underpaid for that payment cycle and take appropriate measures to correct any errors;
 - c. Include, in its comments to the Draft Report, a statement explaining how this required corrective action was implemented and provide all supporting documentation.; and

Response:

The Draft Report indicates that there was a possible conflict between the date the Director of Litigation returned to employment status after a leave of absence, based upon his payroll record return date of August 13, 2012 and an activity log on a TRLA case that indicated that he had worked for 2 hours on August 7, 2012. The Litigation Director was not paid for the work performed on August 7, and August 13 is the correct date for his return to employment status.

TRLA has determined that the Director of Litigation's actual return date from his leave of absence was August 13, 2012. There was no discrepancy between the actual return date and the date listed on his Personnel Action Form or on the payroll routing slip. The Director of Litigation was properly compensated for the payment cycle in question. Attached is the supporting documentation: (1) the routing slip indicating the employee's date of return of August 13, 2012; (2) the Personnel Action Form indicating the return date of 8/13/12; (3) the time and attendance report indicating that the employee returned to work on August 13, 2012; and (4) a copy of the individual's pay stub. The time and attendance report shows the total hours worked from August 13, 2012 to August 24, 2012 as 52.20 hours; the pay stub indicates the hours compensated were 52.20 hours.

2. As to the TRLA employee with the name change, TRLA must include in its comments to

the Draft Report verification that the name on the payroll register and employee staff listing is one in the same by providing a copy of the employee W-2 statement for 2012.

Response:

TRLA has verified that the name on the payroll register and the name on the employee staff listing are the same. Andrea changed her last name to Harrington. A copy of the employee's W-2 statement for 2012 is enclosed.

Finding No. 2: Timekeeping requirements

3. Pursuant to 45 CFR Part 1635, ensure that all attorney and paralegal time spent working on cases, matters, and supporting activities is accounted for by time records which record the amount of time by date and in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorney and paralegal for which compensation is paid by TRLA;

Response:

TRLA's timekeeping system is an integral component of the Client Tracking System (CTS), the in-house custom-written case management system. The CTS accounts for time in increments of one-tenth of an hour. Attorneys, paralegals, and other staff working on cases are required to document time spent on cases, matters, and supporting activities through this system.

4. Enforce its timekeeping policy, which states that "[f]ailure to comply with these requirements may result in disciplinary action;"

Response:

TRLA enforces its timekeeping policies by periodic reminders to all staff via telephone calls, email, and at staff conferences, as well as specific admonitions and disciplinary warnings to staff members who fail to log their time in the case management system. Warnings have been given to staff who do not comply with these requirements.

5. Pursuant to 45 CFR § 1635.3(d) , include on all future part-time certification forms the names of all part-time employees (attorneys and paralegals) who also work for an organization which engages in restricted activities; and

Response:

We disagree with the assertion in the Draft Report that the 45 C.F.R. §1635.3(d) certification requirements apply to part-time attorneys who also maintain a part-time private law practice. That interpretation of the regulation has never been made generally known to recipients, and we believe that the interpretation in the Draft Report is erroneous.

The certification requirement applies only to attorneys or paralegals who also work "part-time for an organization that engages in restricted activities". The term "organization" is not defined

in 45 C.F.R. §1635; however, the common usage of that term does not include a private law practice. Where the Corporation has sought to identify private law firms or practitioners, it has used other terminology, e.g., “person or entity” in 45 C.F.R. §1610.7. TRLA considers an “organization” in this context to be a non-profit corporation or non-governmental entity that, at least in part, engages in activities that are restricted under LSC regulations. Even the Draft Report recognizes the distinction between a private law practice and an “organization engaged in restricted activities”: “[t]his individual *does not work for an organization*, but maintains a private practice....” Draft Report, p. 19 (emphasis supplied). Nonetheless, the plain meaning of the term is ignored and, without citing any authority, the Draft Report asserts that “organization” includes a private law practice, whether operating as a sole practitioner or as a law firm. This overly broad interpretation of the term “organization” may lead to overly broad applicability of the certification requirement. For example, the term “part-time attorney” is likewise not defined by LSC regulations. Is a PAI contract attorney a “part-time attorney” and therefore required to sign a certification that she is not engaged in restricted activities? If so, TRLA would have to obtain quarterly certifications from 119 PAI contract attorneys who charge fees to ineligible clients, a “restricted activity,” and ask them to subject themselves to the potential sanctions of federal law for an invalid certification.

Thus, it is TRLA’s position as a matter of law that it is not required to maintain certifications pursuant to 45 C.F.R. §1635 for part-time attorneys who also maintain a part-time private law practice. This is how we have interpreted and applied this provision in the past, and we have not previously been advised to the contrary by LSC. Of course, if LSC officially interprets the term “organization” in 1635 to include private practitioners, TRLA will in the future obtain the 1635.3(d) certifications for part-time attorneys who also maintain a private law practice.

6. Submit, as part of its comments to the Draft Report, a most recent copy of this certification.

Response:

Attached are the most recent copies of the certification for attorneys working part-time during the first quarter of 2013 for TRLA and part-time for another organization.

Finding No. 4: Procedures and internal controls regarding procurements

7. Establish acquisition policies and procedures that ensure required LSC prior approvals are obtained in accordance 45 CFR § 1630.5 and the PAMM §§ 3 and 4 and include copies of same as attachments to its response to the Draft Report;

Response:

The Property Acquisition Policy approved by the TRLA Board of Directors on June 8, 2013, as well as the procedures for ensuring required approvals, has been added to TRLA’s Accounting Policies and Procedures Manual, which is attached. All are in accordance with 45 CFR § 1630.5 and the PAMM §§ 3 and 4.

8. As to the acquisition made on July 29, 2010 totaling \$11,635.05, pursuant to the PAMM §3, TRLA must:

- a. Provide documentation demonstrating that LSC prior approval was obtained for this acquisition as attachments to its response to the Draft Report; or
- b. Provide documentation demonstrating that that the entire cost was not charged to the LSC fund account as attachments to its response to the Draft Report; or
- c. Transfer back over to the LSC fund account all monies exceeding \$10,000.00 relating to the items purchased as noted on the purchase order where LSC funds were used (*See* 45 CFR §1630.5) and include documentation evidencing same as attachments to its response to the Draft Report; or
- d. Seek LSC's determination that the use of LSC funds totaling \$11,635.05 was reasonable and necessary and that TRLA followed the requirements of the PAMM when determining which vendor to choose, despite not requesting approval. Include documentation evidencing same as attachments to its response to the Draft Report; and

Response:

TRLA purchased three items to improve its existing voice and data transmission systems. Although the items were purchased from the same vendor on the same day, TRLA's understanding of the regulation and PAMM is that separate items should not be aggregated for purposes of determining whether LSC permission is needed. Prior authorization from LSC was not sought because two related items were less than the \$10,000 threshold under 1630.5, as was the unrelated third item. Each item could have been purchased from a different vendor on a different occasion. Each item was an independent, unrelated improvement to the program's VoIP telephone system or its data transmission systems. The upgrades in 2010 were for a Cisco Call Manager Subscriber and Publisher, and a Cisco Unified Communication Express unit. The Subscriber and Publisher should be treated as related items, each costing \$3,878.35, with a combined price of \$7,756.70. These two components control all voice and mail communications, including paging and toll bypass on over 200 phone sets in 12 branch offices. The Cisco Unified Communication Express unit directs calls within the centralized telephone intake system, the Telephone Access to Justice ("TAJ") hotline system. It is a stand-alone system, not related to, or a component of, the general telephone system among the branch offices. The Express unit also cost less than \$10,000.

It is our opinion that TRLA did not violate the "prior approval" requirement on this matter. Section 1630.5(b)(2) states, "Purchases and leases of equipment, furniture, or other personal non-expendable property, if the purchase price of any individual item or property exceeds \$10,000;" (emphasis added). Additionally, the PAMM states in Section 3 "Under both the proposed and this final PAMM, prior approval is required, as specified in 45 CFR part 1630, for individual item acquisitions of over \$10,000, but not for aggregate acquisitions of over \$10,000." There

were two related components purchased for a combined price that was less than \$10,000 and one unrelated component that also was less than \$10,000.

Should LSC disagree with our position, TRLA will transfer \$1,635.05 back to the LSC fund account, the amount exceeding \$10,000 relating to the acquisition made on July 29, 2010.

9. As to the construction project expenditure, totaling \$28,500.00, TRLA, pursuant to 45 CFR § 1630.5(b)(4) and PAMM § 4(f), must:
 - a. Provide documentation that LSC prior approval was obtained for this expenditure as attachments to its response to the Draft Report; or
 - b. Provide documentation demonstrating that this expenditure was not a capital improvement as defined by the PAMM § 2(c) as attachments to its response to the Draft Report; or
 - c. Provide documentation demonstrating that the amount exceeding \$10,000.00 was not charged to the LSC fund account as attachments to its response to the Draft Report; or
 - d. Seek LSC's determination that the use of LSC funds in excess of \$10,000.00 was reasonable and necessary and that TRLA followed the requirements of the PAMM when determining which vendor to choose, despite not requesting prior approval and include documentation evidencing same as an attachment to its response to the Draft Report; or
 - e. Transfer back over to the LSC fund account all monies in excess of \$10,000.00 relating to this expenditure where LSC funds were used and provide documentation evidencing same as attachments to its response to the Draft Report.

Response:

Hurricane Alex in June 2010 and a series of subsequent thunderstorms in the Coastal Bend area of Texas caused extensive flooding to TRLA offices in Corpus Christi and Sinton. TRLA entered into an agreement with Caleb Construction in July of that year to reseal and repair an external wall in the Corpus Christi Pueblo Street office for a total price of \$10,014, and also retained the same firm to make flooding repairs to the Sinton office in San Patricio County for \$2,986. TRLA inadvertently failed to seek approval for the repairs to the Corpus office, which exceeded the threshold under 45 C.F.R. §1630.5(b)(4) by \$14.00. TRLA did not believe that it was necessary to seek LSC approval for the separate repairs to the Sinton office, which were substantially under \$10,000..

Subsequently, TRLA determined that the flooding had caused additional and previously undetected damage to the Corpus Christi office. The moisture in the carpet and flooring was creating the growth of mold, and it was necessary to contract with Caleb again to remove and replace the carpet and to make additional flooring repairs. TRLA agreed to the submitted proposal for \$15,500 on September 21, 2010, and made the payment to the construction company on October 7, 2010. TRLA unintentionally failed to submit a request to LSC for prior approval for this expenditure and will reimburse the LSC account for the \$5,500 in excess of the threshold.

Finding No. 5: TRLA's PAI efforts

10. Develop and establish written policies and procedures documenting its PAI methodology calculation and include documentation evidencing same as attachments to its response to the Draft Report.

Response:

TRLA's PAI methodology calculation has been added to the TRLA's Accounting Policies and Procedures Manual, which is attached.

Finding No. 6: Procedures and internal controls regarding legal consultants/ contract services

11. Review all current PAI contracts for 2010 through 2013 for accuracy, *i.e.* ensure that the scope of the contract is clearly defined, properly executed by authorized persons and relevant parties, and all contract terms and modifications are notated on the contract with appropriate authorizations and/or that addendums are attached memorializing the modifications with appropriate authorizations. Where TRLA finds contracts with inaccurate terms, it must take appropriate measures in accordance with its internal formal policies to correct the issues, *i.e.* draft an addendum to the contract with appropriate authorizations and include in its response to the Draft Report details regarding each issue(s) discovered (if any) and how the issue(s) was (were) remedied;

Response:

All such contracts were reviewed and no issues were discovered.

12. Review the payments made to PAI attorneys from 2010 through 2013 to ensure that all payments were properly issued in accordance with the payment schedule that was in effect at the time the contract was executed and where issues are noted, take appropriate measures to correct the issue, *i.e.* in the case of underpayment, issue the amount owed and include in its response to the Draft Report details explaining the issue(s) discovered (if any) and how the issue(s) was remedied;

Response:

All such contracts were reviewed and no issues were discovered.

13. To the extent that any of the noted issues in this Finding alter its PAI requirement for fiscal year 2011, TRLA must include in its response to the Draft Report the revised amount or a statement indicating that the amount is unchanged;

Response:

No issues were discovered.

14. Review all active agreements for legal consultants to ensure that said agreements are correctly memorialized and that the agreements contain accurate terms with appropriate authorizations. Where TRLA finds agreements with inaccurate terms and/or improper authorizations, it must take appropriate measures in accordance with its internal policies to correct the issues and include in its response to the Draft Report details explaining the issue(s) discovered and how the issue(s) was remedied;

Response:

No issues were discovered.

15. For each consultant agreement entered into after September 30, 2012, TRLA must include in its response to the Draft Report, a statement confirming that a determination has been made that these services are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, who is responsible for making this determination and how such a determination will be reached;

Response:

No new consultant agreements have been entered into in fiscal year 2013.

16. As TRLA indicated that the Oregon based attorney No. 1 who does migrant work is not a PAI attorney, TRLA must include in its response to the Draft Report a properly executed contract for this individual and, in accordance with its internal policies, include a determination that the services offered are needed and cannot be performed economically or satisfactorily by existing staff during the course of their normal responsibilities or duties, indicating who made this determination and how this determination was made; and

Response:

A copy of the most recent contract with D. Michael Dale is attached. Mr. Dale is one of the nation's most experienced and respected attorneys in the practice of law for migrant and seasonal farm workers. He has over 30 years of federal court litigation experience in cases brought under the Migrant and Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act, and his contributions as a consultant to less-experienced TRLA migrant staff have been invaluable. Those contributions, including his advice and counsel on matters of migrant legal services delivery systems, have become even more important since the former Director of the TRLA Farm Worker Division was promoted to Deputy Director in early 2012. His promotion removed a lawyer with similar experience to that of the consultant from his role as supervisor, mentor and advocate for migrant staff. Those kinds of assets are difficult to replicate in the best of circumstances, and TRLA is very fortunate to have someone of Mr. Dale's experience and professional competence available to assist in those roles. There was no one on staff who had comparable experience and litigation talents who could perform such an advanced level of

services for the program.

17. As to the fee for service arrangement where total issued payments to an Oregon based attorney No. 2 that were in excess of \$25,000.00, TRLA must submit all relevant documentation establishing:

- a. This fee for service arrangement is not a subgrant as defined by 45 CFR § 1627.2(b); or
- b. That LSC did approve this subgrant pursuant to 45 CFR § 1627.3(b); or
- c. That LSC did not respond to the request for approval within 45 days and that LSC was notified of said failure and did not respond within seven (7) days of the receipt of such notification; *or*
- d. TRLA may opt to confirm that this is a sub-grant pursuant to 45 CFR § 1627.3(b) and transfer back over to the LSC fund all monies exceeding \$25,000.00 relating to the fee for service contract (in 2010 for \$51,853.62 and in 2012 for \$53,950.30) where LSC funds were used and include documentation evidencing same in its response to the Draft Report. *See* 45 CFR § 1630.2(g)(1).

Response:

For TRLA's fiscal year 2010 (October 1, 2009 – September 30, 2010) payments issued to Oregon based attorney No. 2 in the amount of \$43,867.77 do not constitute a subgrant as defined by 45 CFR § 1627.2 (b). TRLA charged only \$25,000.00 to LSC. A journal entry number 990 dated September 30, 2010 was entered and \$18,867.77 was reclassified to another fund source. Attached is the relevant documentation.

For fiscal year 2012, TRLA will transfer back to the LSC fund all monies exceeding \$25,000.00 relating to the fee for service contract for payments issued to Oregon based attorney No. 2. An adjusting entry for \$28,041.22 will be entered into TRLA's general ledger for the month of June 2013. Attached is the documentation.

Finding No. 7: Procedures and internal controls regarding travel

18. TRLA must establish procedures that retain/maintain records documenting prior written approval for local and out-of-town travel for all staff and include as an attachment documentation evidencing same in its comments to the Draft Report.

Response:

Procedures requiring prior written approval have been added to TRLA's Accounting and Procedures manual, which is attached.

Finding No. 8: Regarding cash disbursements/credit cards/electronic banking

19. As to charge/credit card use, TRLA's policy must establish, at minimum, procedures that require:

a. Submission of proper and adequate supporting documentation for all employees including the Executive Director. TRLA should include the policy as an attachment to its response to the Draft Report; and

b. Proper segregation of duties with careful consideration and adequate mitigation given to the review process when it would require a subordinate employee reviewing a senior employee's charge/credit card statements.

Response:

The Credit Card Policy adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, has been added to TRLA's Accounting Policies and Procedures Manual, which is attached.

20. Provide documentation as an attachment to its Draft Report substantiating why the \$20,800.00 of charges that were not supported with adequate documentation should be allowed; and

Response:

TRLA has reviewed the relevant credit card charges reviewed by OCE during the identified period that were not supported by the kind or type of documentation that appears to be preferred by the OCE Draft Report. All of the credit card charges in question were incurred by the Executive Director. The Executive Director provides the same detail on charges as would be submitted on TRLA's various reimbursement forms (out-of-town travel, local travel, and out-of-pocket expenses). The Executive Director does not request reimbursement for mileage, per diem, meal and entertainment, and similar program-related expenses, other than those charged to the American Express card. Since he does not use forms to seek reimbursement, the Executive Director furnishes a detailed explanation of each expense on the AmEx invoice before payment is made, such as the business purpose of travel or meal expenses that involve attorney recruitment or staff meetings. The independent auditor has agreed that this practice provides adequate documentation of the expenses, and in the course of his audits he has reviewed all of the expenses charged by the ED. The independent auditor reviews the ED's charges with the Finance Committee and it is reported to the Board of Directors. That practice is now memorialized in writing through the Credit Card Policy adopted by the Board of Directors on June 8, 2013, above. During the period from January 1, 2010 through September 30, 2012, TRLA identified \$20,709.29 in charges made to the AmEx card by the Executive Director that were documented under the policy and practice described here. That documentation is attached. Each of the charges was reasonably and necessarily incurred for legitimate TRLA purposes and should be allowed.

21. Develop written policies and procedures that contain internal controls for electronic banking. The same should be included as attachments to its response to the Draft Report.

Response:

TRLA's Electronic Banking Policy adopted by TRLA's Board of Directors on June 8, 2013, as well as internal procedures, have been added to TRLA's Accounting Policies and Procedures Manual, which is attached.

Finding No. 10: Procedures and internal controls regarding bank reconciliation

22. TRLA must develop bank reconciliation written policies, which it should attach to its response to the Draft Report, and which at minimum include:

- a. How old checks have to be before they are considered outstanding, stale dated or voided;
- b. A voided check policy that is consistent and uniform with the number of days denoted on the check;
- c. Procedures to notify financial institutions in writing and/or by telephone when there is a follow-up to any exception identified in the bank statement reconciliation;
- d. The requirement that the Chief Financial Officer and designated preparers to sign and date bank statement reconciliations for which they are responsible for preparing, reviewing, and approving; and
- e. The requirement that Management review, sign, and date all bank statements indicating review and approval prior to their delivery to the designated preparers for reconciliation.

Response:

The bank reconciliation policies and procedures have been updated in TRLA's Accounting Policies and Procedures Manual, which is attached.

23. As to bank statement reconciliations and follow-up and bank closings TRLA must:

- a. Investigate its prolonged outstanding or stale dated checks and resolve them in a timely manner and include documentation evidencing same as an attachment to its response to the Draft Report;

Response:

The August 31, 2012 bank statement reconciliation for the general operating fund account has

seven stale checks that had been outstanding for over 90 days. Six checks were voided on 9/31/2012, the end of the fiscal year. Prior policy was to void stale checks at the end of the fiscal year. The remaining check was payable to the Social Security Administration and is still under investigation.

- b. Revise its Client trust and Petty cash bank statement reconciliation forms to include the date(s) that the check(s) was issued or disbursed and include documentation evidencing same as an attachment to its Draft Report;

Response:

Attached are TRLA's Client Trust and Petty Cash Bank Statement Reconciliation forms which have been revised to include the date(s) that the checks(s) were issued or disbursed.

- c. Verify from its bank statement reconciliations that all banks have been notified of any banking errors and include documentation evidencing same as an attachment to its Draft Report; and
- d. Demonstrate that any bank account closings in 2012 received Board approval (and if not TRLA must notify its Board of the closing), and include documentation evidencing same as an attachment to its Draft Report.

Response:

- c. No banking errors were discovered.
- d. TRLA notifies its Board of Directors at regular board meetings of any bank account closings or signature changes. See June 8, 2013 report attached. Note that signatory names have been deleted for the privacy of our employees.

Finding No. 11: Accounting procedures and internal controls regarding petty cash

24. Demonstrate that they have the required signatory requirements for each of the 16 branch offices and provide documentation evidencing same as an attachment to its Draft Report. As stated in the accounting policies and procedures manual, TRLA should have as signatories two (2) attorneys and two (2) secretaries.

Response:

Procedures have been revised in TRLA's Accounting Policies and Procedures Manual, which is attached.

Finding No. 13: Procedures and internal controls regarding record retention and periodic destruction policy

25. Develop written policies and procedures that document record retention and periodic

destruction policies consistent with the requirements of AGLR, App. II (outlining the retention times for nonprofit records); also *see* "LSC Grant Assurances for Calendar Year 2012" No. 17 (requiring Recipients to maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant).

Response:

Document Retention Policies adopted by the TRLA Board of Directors on December 21, 2012 have been added to TRLA's Accounting Policies and Procedures Manual, which is attached.

Finding No. 15: Procedures and internal controls regarding prohibited purchases of alcoholic beverages

26. Transfer back to LSC, any LSC funds that were used to purchase alcohol beverages in 2010 through 2012 and provide documentation evidencing same as an attachment to its Draft Report.

Response:

TRLA policy prohibits the expenditure of program funds for alcoholic beverages and refuses to reimburse any employee for such prohibited expenses. The Draft Report indicated that OCE had discovered one occurrence where LSC funds were mistakenly used to purchase alcoholic beverages. Finding 15, p.3. After an exhaustive search, TRLA has been unable to identify any employee expense reimbursement forms or receipts indicating a reimbursement for alcoholic beverages during the indicated period. Upon receipt of detail from OCE (name of person reimbursed and date of reimbursement), TRLA will make any necessary adjusting entry to unrestricted funds and credit the LSC account.

Finding No. 16: Procedures and internal controls regarding cost allocation

27. As to the cost allocation methodology for TRLA's Basic Field-General and in accordance with the OIG Recommendation, TRLA must:

- a. Revise its Cost Allocation Policy by making it more defined and grant specific (*i.e.* detailing the methods used to allocated costs for each natural expense line item, by grant);

Response:

After reviewing TRLA's Cost Allocation Policy adopted on September 22, 2012 by TRLA's Board of Directors, based on OIG's recommendation, TRLA has found that the cost allocation policy meets OIG's guidelines. TRLA's Cost Allocation Policy is defined and grant specific. The cost allocation policy and procedures, now contained in the TRLA Accounting Policies and Procedure Manual, are attached.

b. Obtain Board of Directors approval of the revised Cost Allocation Policy; and

Response:

Cost allocation policies and procedures as approved by the TRLA Board of Directors on September 22, 2012 are contained in the TRLA Accounting Policies and Procedure Manual, attached.

c. Provide documentation evidencing same (nos. 1-2) as an attachment to its response to the Draft Report.

Response: See above

28. As to the Public Defender Program's fair share of front office expense and in accordance with the OIG Recommendation, TRLA:

a. Should consult with its IPA in determining for each front office expense (see b through i), the amount of LSC funds (if any) that were used to subsidize the Public Defender Program in fiscal years 2010 through 2012;

Response:

IPA has been consulted and will be consulted again at the end of fiscal year 2013.

b. Must transfer from non-LSC funds to the LSC fund balance all monies identified where LSC funds were used to subsidized the Public Defender Program;

Response:

TRLA has used the allocation formula suggested by OCE in its Draft Report, and has made an adjusting entry from the unrestricted account to the LSC fund account in the amount of \$5,710 for fiscal years 2010 through 2012. The amount transferred covers indirect costs of the operation of the central administrative office attributable to the public defender programs. See the attached worksheet.

c. Must follow its current policy and allocate a fair share of front office costs to the Public Defender Program for fiscal year 2013 and forward;

Response:

TRLA will continue to follow its current policy and allocate a fair share of indirect cost to the Public Defender Program for fiscal year 2013 and forward.

d. Must determine if LSC funds are used to subsidize any other programs and take the appropriate steps in resolving these occurrences; and

Response:

After review, TRLA has determined that no LSC funds were used to subsidize any other non-LSC-eligible programs.

- e. Must demonstrate that a fair share of front office expense was allocated to the Public Defender Program and include in its response to the Draft Report a summary explaining how.

Response:

Although TRLA disagrees that a fair share of “front office expense” was not allocated, will make the entry at the end of June 2013 to TRLA’s general ledger from unrestricted to LSC funds in the amount of \$5,710 for fiscal years 2010 through 2012. See attached worksheet (b, above).

29. As to the cost allocation methodology for TRLA's Migrant grant, TRLA must:

- a. Accurately account for direct and indirect costs charged to its SMLS program by individual service area;
- b. Prepare a general journal for all transfers between LSC Basic-Field, LSC Texas- Migrant, and LSC SMLS Migrant (by expense category and by service area); and
- c. Until further notice, use non-LSC funds to offset any deficit spending in SMLS.

Response:

The Southern Migrant Legal Services program was created as a cooperative enterprise by the directors of TRLA and the migrant grant recipients in Kentucky, Tennessee, Mississippi, Alabama, Louisiana and Arkansas. From the outset it was intended to be, and has operated as, a regional program from an office in Nashville. It was the product of an LSC-sponsored migrant conference in Boerne, Texas in 1999, where LSC sought to have lawyers who were experienced in migrant service delivery address the problem of small state grants that were unable to deal effectively and efficiently with the needs of a mobile, isolated workforce passing temporarily through a state. LSC encouraged TRLA to experiment in operating a regional migrant program in the Southeast. With the cooperation and encouragement of the project directors in the six states, TRLA submitted a proposal for such a project in 2000; the resulting SMLS project has been a resounding success.

As noted in the first grant application, there was no question that SMLS was intended to be an integral part of not only the TRLA program, but also a collective, joint effort by and for the six southeastern states:

“This project [SMLS] is the product itself of a coordinated effort. The project directors of six states have come together to create *a truly joint enterprise* for the agreed goal of improving the delivery of legal services to farm workers in a large, underserved area.” LSC Grant Application for MAL, MAR, MKY, MLA, MMS, MTN, MTX, June 2000, p. 51 (emphasis added).

Those at LSC and at TRLA who created the SMLS project knew that the only way to provide effective legal services to the migrant workforce in the South was to do so as a joint enterprise, not as six small, separate state programs. “By *combining forces and pooling funding*, the region will have the nucleus of a program that can leverage local resources while tapping into the existing TRLA support system.” *Id.*, p. 55 (emphasis added). TRLA made it clear from the beginning that it was going to operate as a single, joint enterprise, not as six separate ones, and that it would be an integral part of the TRLA migrant delivery system. There would be some years when one or two states would have nothing more in services than perhaps outreach efforts by TRLA paralegals and volunteer summer interns. But over the course of several years, every state would receive more services for its migrant workers than its small grant permitted. For several years, there were limited services rendered in cases from Mississippi, for example, where the annual grant has been about \$57,000. But in March 2010, SMLS/TRLA filed suit against a large Mississippi-based corporation and have now invested over 5,600 hours in the representation of a group of migrants with serious, complex legal issues. That litigation is likely to continue for several more years at that level of investment.

Although TRLA probably can, through its existing systems, “accurately account for direct and indirect costs charged to its SMLS program” by each of the six separate state grants, the more fundamental question is whether it can operate a truly regional migrant delivery system if the expenditures in each state are limited to the grant funds available to that state. The answer to that question is obviously no. Most of the grant activity at SMLS is federal court litigation and litigation is inherently unpredictable. The Mississippi lawsuit cannot be abandoned when the 800-hours-per-year limit under the Mississippi grant is reached.

Similarly, the demand that TRLA “use non-LSC funds to offset any deficit spending in SMLS” is an impossibility, simply because TRLA does not have any non-LSC funds that can be applied to SMLS. If that demand is intended to address the TRLA practice of using Texas migrant grant funds (MTX) to subsidize SMLS activities, that demand is misplaced. As was pointed out in the original application for SMLS funding, “Many, if not most, of the migrants eligible for LSC-funded legal services in Alabama, Arkansas, Kentucky, Louisiana, Mississippi and Tennessee reside in communities along the Texas-Mexico border during the off-season and are frequently served by TRLA.” *Id.*, p. 2. If the Corporation is now taking the position that a Texas resident who migrates to Kentucky for several weeks of harvest work cannot be served by TRLA using MTX funds, then the vast majority of TRLA’s migrant representation is out of bounds. Texas is still the single largest repository of interstate migrant farm workers; it’s known in the trade as a “base state.”¹ Workers travel across the country into different states where they suffer labor abuses. They often bring those legal issues to TRLA upon their return home, and TRLA provides representation in litigation under the Texas Long-Arm Statute in federal courts in Texas. We do not refer the worker to a migrant program in Delaware if we can find jurisdiction in a Texas court. And there is no logical reason for TRLA not to use MTX funds to represent a

¹ There is a fundamental misunderstanding of the reality of migrant practice at fn. 54 in the Draft Report. *Id.*, p. 61. It states that “SMLS serves migrant farm workers *residing in*” the six states. In fact, with very few exceptions none of the SMLS clients reside in one of the six states. They work temporarily in those states, but do not abandon their permanent residences or domiciles in Texas or another base state.

Texas migrant who works in one of the six SMLS states.

An effective, efficient migrant program can only be operated in the manner that TRLA has operated SMLS, pooling the seven grants to operate on a joint, regional basis. Please consider this response to Finding No. 16 as it relates to SMLS as our formal request, if that be required, that the Corporation permit TRLA to pool its migrant grants to operate an integrated, regional migrant delivery system in Texas, Louisiana, Arkansas, Mississippi, Alabama, Tennessee and Kentucky.

Finding No. 18: Procedures and internal controls regarding donor notification letters

30. Ensure that all funding sources of \$250.00 or more receive the required written notification of the prohibitions and conditions that apply to those funds; and

Response:

The TRLA Development Director now ensures that all funding sources of \$250.00 or more receive the required written notification.

31. Provide to OCE, with its comments to the Draft Report, written evidence of 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more.

Response:

Attached are 10 notification letters that were sent to various non-LSC funding sources of \$250.00 or more. Note that the letters are dated with the date they were printed due to the software program, but they were mailed near the beginning of the month after they were received.

Finding No. 19: Procedures and internal controls regarding recording and accounting for activities funded with non-LSC funds

32. Transfer back to the LSC fund the *de minimis* amount of \$16.00 related to the reimbursement for travel expenses, for one employee's participation in legislative activities; and

Response:

Upon further review only \$10.04 will be transferred back to LSC funds for travel expenses for one staff member participating in legislative activities. The total amount claimed for the travel expenses in question was \$18.04. Eight dollars of that expense was paid by a fund source other than LSC, leaving a balance of \$10.04 which will be transferred back to LSC funds. Enclosed is documentation which indicates that only \$10.04 was charged to LSC funds for travel expenses.

33. Maintain separate records documenting the expenditure of non-LSC funds for legislative and

rulemaking activities. In other words, TRLA must maintain, on a separate schedule, all costs associated with legislative and rulemaking activity (by participant's name, date, purpose, expense category, amount, total, etc.).

Response:

TRLA currently maintains such schedules and will continue to do so.

Finding No. 21: Procedures and internal controls regarding fiscal oversight by Board

34. TRLA's Board of Directors, in accordance with its internal policies, must ensure that the Executive Body is reviewing all PAI contracts (*See* Finding No. 6, discussing segregation of duties in executing PAI contracts); and

Response:

TRLA's internal policies have never included "executive body" review of individual PAI contracts. The Executive Director is the person designated by the Board of Directors to execute all contracts on behalf of TRLA, including PAI contracts. The contracts and expenditures pursuant to the contracts are reviewed by the independent auditor, who reports to the Board of Directors.

35. TRLA's Board of Directors must establish internal control procedures that would include, at minimum, reviewing all credit card purchases made with a TRLA credit card by the Executive Director to determine if they are supported with adequate documentation, *i.e.* receipts.

Response:

See TRLA's credit card policy adopted by the TRLA Board of Directors and included in the attached Accounting Policies and Procedures Manual.