

MEMORANDUM

TO: All Executive Directors

FROM: Helaine M. Barnett *HMB*

DATE: January 21, 2009

SUBJECT: Measuring the Number of Potential Clients that we are Unable to Serve – Update of the 2005 Study

As we discussed at the Executive Directors' meeting in June 2008, the 2005 LSC report, "Documenting the Justice Gap in America—*The Current Unmet Civil Legal Needs of Low-Income Americans*," was instrumental in making the case that significantly more funding, both at the federal and local level, is needed to effectively address the unmet demand for civil legal services for low-income persons. We believe it is time to update the study this year. Our intent is to replicate and update the three components of the 2005 study—the count of applicants who come to LSC grantees who cannot be served because of insufficient program resources, an analysis of statewide legal needs studies conducted since the 2005 report, and a comparison of attorneys working for legal services and attorneys who are available to the general public. We will also attempt to analyze court data on low-income persons who were unrepresented.

This update is being coordinated by a committee consisting of: Jonathan Asher, Executive Director, Colorado Legal Services; Terry Brooks, Legal Counsel to the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID); Bob Echols, ABA consultant; the Honorable Deborah Hankinson, Chair of SCLAID; De Miller, Executive Director of Legal Services of New Jersey; Don Saunders, Civil Director of the National Legal Aid and Defender Association (NLADA); Lois Wood, Executive Director of Land of Lincoln Legal Services; Anthony Young, Executive Director of Southern Arizona Legal Aid; and LSC staff members.

I am writing to seek your help documenting the number of persons that come to your offices that you are unable to serve or unable to serve fully. This measure of unmet need has the advantage of measuring actual applicants, rather than theoretical numbers of legal issues reflected in surveys. In order to make this study as comparable as possible to the 2005 study, we will be following the 2005 protocol and the same timeframe. We are asking you to make a count for two months – from Monday, March 16th through Friday, May 15th – of those who come to your program with legal problems that the program is unable to serve or unable to serve fully because of lack of resources.

We recognize that many programs are providing mechanisms to provide applicants they are not able to serve fully with some assistance, such as advice or pro se guidance. While these are often helpful, it is also often clear that more assistance would have been appropriate if available. We are therefore asking you to count not only those who were turned away and not provided any services, but also those who were provided some, but not full service. “Unable to serve” includes those who were rejected at intake even though eligible for LSC services; “unable to serve fully” consists of those who received some services, but not full extended representation when such would have been helpful.

As before, we are seeking these data in order to give us an estimate of applicants who approached LSC grantees with legal needs that could not be addressed because of insufficient resources. We recognize that this method is imperfect and has limitations. It does not measure all of the unmet need. Some people with legal needs don’t contact legal services offices either because they are not aware of legal services or because they think that the program can’t or won’t help them because of the program’s priorities or limited resources. Some may not know that the problem they are facing has a legal remedy. Still others call legal services, but drop off of the line after being on hold for some time. Our analysis of the data will mention these sources of undercounting. We will also attempt to supplement this study by other sources of information that reflect legal needs.

We have attached a sample form and instructions similar to the form used in 2005 that was reviewed by a number of executive directors whose programs serve a variety of different localities.

We will be sending you guidance for using your case management system to collect this information at time of intake. Instructions for sending us your data by June 1, 2009 will also be sent under separate cover.

Please feel free to contact us with any questions you may have. Send inquiries to UTSquestions@lsc.gov. Individual responses will be sent out promptly; those with general applicability will be compiled into a Frequently Asked Questions list that will be accessible on the RIN.

Thank you for your participation in this important endeavor.

Attachments

LSC Unable to Serve Study Form

Program: _____

RNO #: _____

Time Period: March 16 through May 15, 2009

	A. Unable to Serve (Includes certain referrals. See FN 3)	B. Unable to Serve Fully (Includes certain referrals. See FN 3)	C. Total A & B	D. Advice/ brief service cases that resolve the matter (if available)	E. Extended Service Cases Accepted
Consumer					
Education					
Employment					
Family					
Juvenile					
Health					
Housing (other than foreclosure)					
Foreclosure					
Income					
Individual					
Miscellaneous ¹					
TOTAL					

Instructions

- The matrix above can be used by those answering intake calls and by those providing advice and brief service to count those whom the program was unable to serve or unable to serve fully. This includes cases that are not within the program's case handling guidelines (e.g., program does not handle uncontested divorces). If this information cannot be collected directly on the case management system, the matrix can be used for counting hash marks and aggregated onto one form. LSC is only asking for one form that would aggregate all the totals collected throughout the program for the period of March 16 through May 15, 2009.
- **A. Unable to Serve.** Where an applicant is rejected at intake, count the applicant as "unable to serve" when:
 - The applicant is eligible for LSC funded representation, **OR** eligibility information was not collected because the program does not handle the type of case presented² **AND**
 - The case presented was within LSC's case closing substantive areas and not barred by LSC regulations, **AND**
 - The case is not being referred to an organization that will provide full representation for the client³

¹ Please include on this line all "other" cases that are not barred by LSC regulations.

² In some instances a program might make the decision to not handle a case based on the type of case it is before eligibility screening is undertaken. In these instances, count the case as "unable to serve." The reporting of statistics will make note of the fact that the number of applicants who were rejected at intake includes some who were not screened for eligibility.

³ No program can ever be sure that another program will accept a case. We are asking that you not count as "unable to serve" those cases that you expect will receive full representation from another program. If, for example, you are referring a case to a legal services program or a private bar involvement program that routinely handles eviction cases of the type presented by the applicant,

- **B. Unable to Serve Fully.** Where a client receives something other than full extended representation to the conclusion of the case, count the client as “unable to serve fully” where the three criteria listed in “A” above are met, and
 - The case would have been appropriate for full representation given sufficient resources. The factors for the reviewing supervisor to consider in making that determination are:
 - The client appears to have a viable, non-frivolous case, and
 - The nature of the case, the forum, or the apparent capabilities of the client are such as to suggest that the client needs full representation.
- **C. Total of A and B.** This total is the number of eligible applicants who contacted the program that the program could have served--or served more fully--if not for resource limitations.
- **D. Advice/Brief Service Cases that Resolve the Request for Assistance. (If Available).** This column is asking for the number of brief service cases that you did not include in “B” above – those cases where, in your judgment at the time, the issue was resolved by brief service.⁴ The data in this column is optional. If you are able to produce this number without significant additional work, please do so.
- **E. Extended Service Cases** In this column, please note the number of extended service cases the program accepted in each of these subject matter categories during the same two month period.

do not count that case as “unable to serve.” If, however, the organization you are referring the case to may or may not take the case, count it as “unable to serve.” In reporting on the results, LSC will make it clear that the possibility that some applicants may receive services is a source of possible over-count.

⁴ A client’s case is “resolved” when s/he is provided limited services that conclude the case. For example, if the program drafts a power of attorney for the client and the client needs no further service regarding the presenting problem, his/her case has been resolved. Pro se assistance may resolve a case when, after receipt of the assistance that is specific to the client’s particular situation, the client could reasonably be expected to pursue the case without further legal assistance.