

## MEMORANDUM

To: All Executive Directors

From: James J. Sandman

Date: February 14, 2017

Subject: Measuring the Number of Potential Clients LSC Grantees are “Unable to Serve” or “Unable to Serve Fully”

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As you may know, LSC has received grants from the William and Flora Hewlett and Kresge Foundations to conduct a new, national study to assess the current size of the justice gap. LSC conducted Justice Gap studies in 2005 and 2009 that yielded important information, but those studies were limited in their scope and are now dated.

For our new study, we are instituting a new methodology for measuring the justice gap that we hope will yield even better estimates of the unmet need for civil legal services.

To assist us in our efforts, we established an advisory committee of experts representing the fields of delivery of legal services, social science research, and court administration. Advisory Committee members are:

- Betty Balli Torres, Executive Director, Texas Access to Justice Foundation
- Jim Bamberger, Director, Office of Civil Legal Aid, Washington State
- Terry Brooks, Legal Counsel to the ABA Standing Committee on Legal Aid to Indigent Defendants
- Colleen Cotter, Executive Director, Legal Aid Society of Cleveland
- Patricia W. Griffin, State Court Administrator, State of Delaware
- Alex Gulotta, Executive Director, Bay Area Legal Aid
- Scott Keeter, Senior Survey Advisor, Pew Research Center
- Edward Montgomery, Dean, McCourt School of Public Policy, Georgetown University
- Lillian Moy, Executive Director, Legal Aid Society of Northeastern New York
- Rebecca Sandefur, Associate Professor of Sociology and Law, University of Illinois, Urbana-Champaign
- Don Saunders, Vice President, Civil Legal Services, National Legal Aid and Defender Association

The new Justice Gap study will have the following elements:

- (1) **Measuring the Need Among the Low-Income Population.** LSC has been working with NORC, a national research firm, to field a survey of the prevalence of legal issues among the nation’s low income population. NORC administers the Amerispeak panel, which is a scientifically rigorous, pre-screened, representative pool of participants who have agreed to take part in regular online and telephone surveys on a wide variety of topics. NORC is currently fielding the survey to 2,000 panel participants whose incomes are at or below 125% of poverty. This survey builds on the best practices and lessons

learned from prior surveys and justice gap studies. The survey instrument will be made available for any state or locality to administer in its jurisdiction.

- (2) **Measuring the Number of Individuals that LSC-Funded Legal Aid Programs are “Unable to Serve” or “Unable to Serve Fully.”** As with LSC’s two prior justice gap studies, we are asking you to help document the number of persons that come to your offices that you are unable to serve or unable to fully serve. With the help of Alex Gulotta, Colleen Cotter, Jim Bamberger, and Lillian Moy, we have revised the data collection spreadsheet that we used for our prior studies. **We are asking you to collect data about those individuals who come to your program with a legal problem that you are unable to serve or unable to fully serve because of a lack of resources. The data collection will last for six weeks -- from Monday, March 6, 2017 to Friday, April 14, 2017.**

We are asking you to collect this information so that LSC will have an estimate of the number of individuals who approached LSC grantees with legal needs that could not be addressed because of insufficient resources. We recognize that this process by itself is imperfect and will not capture all of the unmet need, which is why we will be supplementing the information you collect with the results of the NORC study.

We have attached a sample form and instructions on how to use the form. The form has three data collection categories: (1) Unable to Serve, (2) Unable to Serve Fully, and (3) Fully Served.

We will be holding two webinars later this month to explain the survey and answer any questions you may have. In the meantime, please feel free to contact us with any questions you would like addressed in the webinar. We will compile a list of Frequently Asked Questions (FAQ) that will be posted on [justicegapstudy@lsc.gov](mailto:justicegapstudy@lsc.gov).

Thank you for your assistance.

## LSC Justice Gap Study - 2017

Please note that the matrix for LSC's new Justice Gap study has more categories than the 2005 and 2009 "Unable to Serve" matrices. We have added the categories to yield a more granular analysis of the reasons why an individual may not receive services from your program.

### **Instructions:**

The attached matrix can be used by staff conducting and reviewing intake, providing advice and limited services, or otherwise involved in the case acceptance process to count applicants for civil legal assistance<sup>1</sup> whom the program was "Unable to Serve," "Unable to Serve Fully," and "Served Fully." This includes cases that are not within the program's case handling guidelines (e.g., the program does not handle uncontested divorces). If this information cannot be collected directly in the case management system, the matrix can be used for counting manually and aggregated onto one form. LSC is asking for one form that aggregates all of the totals collected throughout the program for the period from **March 6, 2017 through April 14, 2017.**

**Unable to Serve – Ineligible.** Where an individual is rejected at intake, count the individual as "Unable to Serve – Ineligible" when the individual:

- Does not meet the program's financial eligibility guidelines; **OR**
- Is an ineligible noncitizen; **OR**
- Has a problem otherwise barred by LSC regulations.

**Unable to Serve – Conflict of Interest.** Count an individual as "Unable to Serve – Conflict of Interest" when:

- The individual is eligible for LSC-funded representation; **BUT**
- A conflict of interest exists<sup>2</sup>; **AND**
- The individual receives no other type of help or guidance from your program (such as the provision of legal information, pro se resources, or pro bono service).

**Unable to Serve – Outside of Program Priorities or Case Acceptance Guidelines.** Count an individual as "Unable to Serve – Outside of Priorities or Case Acceptance Guidelines" when:

- The individual is eligible for LSC-funded representation; **AND**
- Has a problem not barred by LSC regulations; **BUT**
- The case falls outside of the program's priorities or case acceptance guidelines; **AND**
- The individual receives no other type of help or guidance from your program (such as the provision of legal information, pro se resources, or pro bono service).

**Unable to Serve – Insufficient Resources.** Count an individual as "Unable to Serve – Insufficient Resources" when:

- The individual is eligible for LSC-funded representation; **AND**
- Has a problem not barred by LSC regulations; **AND**
- The case falls within the program's priorities or case acceptance guidelines; **AND**

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<sup>1</sup> Civil legal assistance relates to cases or issues presented by an individual that fall within LSC's problem code substantive areas, and that, if accepted, would constitute a case under the CSR Handbook, §§ 2.1 and 2.2.

<sup>2</sup> See 45 CFR § 1626.4.

- The individual receives no other type of help or guidance from your program (such as the provision of legal information, pro se resources, or pro bono service) other than a referral to another organization.

**Unable to Serve – Other Reasons.** Count an individual as “Unable to Serve – Other Reasons” when:

- The individual is eligible for LSC-funded representation; **AND**
  - The case was accepted by the program, **BUT**
  - The individual did not receive legal assistance for other reasons, such as the individual did not follow through with direction given on their case, or the program lost contact with the individual.
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**Unable to Serve Fully – Insufficient Resources –Provision of Legal Information or Pro Se Resources.**

Count an individual as “Unable to Serve Fully – Insufficient Resources – Provision of Assistance or Pro Se Resources” when:

- The individual is eligible for LSC-funded representation; **AND**
- The case presented is not barred by LSC regulations; **AND**
- The case would have been appropriate for full representation given sufficient funding; **BUT**
- The program does not have sufficient resources to accept the case; **OR**
- The case was not accepted due to a conflict of interest (see above) or the case was outside priorities or case acceptance guidelines (see above); **AND**
- The program provided the individual legal information pro se resources, but not legal assistance, and the legal information or pro se resources were not expected to fully resolve the case.

**Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code “L”.** Count an individual as “Unable to Serve Fully – Insufficient Resources – Provided Limited Service or Closing Code ‘L’ ” when:

- The individual is eligible for LSC-funded representation; **AND**
  - The case presented was not barred by LSC regulations; **AND**
  - The case would have been appropriate for full representation given sufficient funding<sup>3</sup>; **AND**
  - The individual received some type of assistance that resulted in the closing the case under the A or B limited service case closure designation, or under closing code “L”.
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**Fully Served –Provision of Legal Information or Pro Se Resources.** Count an individual as “Fully Served –Provision of Legal Information or Pro Se Resources” when:

- The individual is eligible for LSC-funded representation; **AND**
- The case presented was not barred by LSC regulations; **AND**
- The program has sufficient resources to provide legal assistance at an appropriate level given the facts and nature of the case; **AND**
- The individual was provided legal information or pro se resources, which were expected to fully resolve the case.<sup>4</sup>

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<sup>3</sup> Here are the factors for the reviewing supervisor to consider to make that determination:

- 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 to suggest that the client needs full representation.

**Fully Served – Provision of Limited Services or Closing Code L.** Count an individual as “Able to Serve Fully – Provision of Limited Services when:

- The individual is eligible for LSC-funded representation; **AND**
- The case presented was not barred by LSC regulations; **AND**
- The individual’s issue(s) was not that complex and the issue was fully addressed with limited advice or limited action that resulted in the closing of the case under the A or B case closure designation, or under Closing Code L.<sup>5</sup>

**Fully Served – Extended Service Case Accepted.** Count an individual as “Able to Serve Fully – Extended Service Case Accepted” when:

- The individual is eligible for LSC-funded representation; **AND**
  - The case presented was not barred by LSC regulations; **AND**
  - The program had the resources available to accept the client’s case for extended service.
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**Pending.** Count an individual case as “Pending” when:

- The individual is eligible for LSC-funded representation; **AND**
- The case presented was not barred by LSC regulations; **AND**
- The program MAY sufficient resources to provide legal assistance at an appropriate level given the facts and nature of the case; **BUT**
- Program management has not made a final decision on the level of legal assistance to provide to the individual.

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<sup>4</sup> Provision of Pro Se resources may resolve a case when, after receipt of the information, the client could reasonably be expected to pursue the case satisfactorily without any legal assistance.

<sup>5</sup> A client’s case is resolved when he or she is provided limited services that conclude the case. For example, if a program drafts a power of attorney for the client and the client needs no further services regarding the presenting problem, his or her case has been resolved.

## JUSTICE GAP STUDY FREQUENTLY ASKED QUESTIONS

Last Updated: March 7, 2017

### **I. LEGAL SERVICES INTAKE DATA COLLECTION**

#### **a) GENERAL INTAKE QUESTIONS**

- **If we do online intake, should we include information on people who use this system in addition to those who walk in or call the program?**

Yes. All avenues to services in your organization should be tracked and reported.

- **We may have to reduce our intake hours because of staffing issues. How should we account for that temporary reduction?**

In general, if you have any idiosyncrasies concerning intake during the reporting period, send us that information to [JusticeGapStudy@lsc.gov](mailto:JusticeGapStudy@lsc.gov). Make sure to identify your organization. However, it should not affect the data reported, because the data reported should be based only on intakes you have processed.

- **How should we capture and report data on callers who are turned away or told to call back due to intake limitations?**

We do not expect you to collect or report data on callers who are turned away or told to call back another time. However, if you do have that data, please send it to [JusticeGapStudy@lsc.gov](mailto:JusticeGapStudy@lsc.gov).

- **Should we include intake at our LSC-funded organizations that are handled exclusively under non-LSC grants?**

If you would report those cases in your CSRs to LSC, then yes.

- **We do intake for a non-LSC subsidiary program. Should we ask them to track those intakes?**

No. This study is just for LSC-funded programs.

- **When our intake line decides that a client fits the priorities/availability of our organization or another organization we complete intakes for, the intake is sent to that organization and we have no further contact with the case. However, we are not informed as to whether, after further research, the receiving organization rejects the case for full representation. Should we base our "Able to Serve" data on intakes completed and sent, and assume they are accepted for full service, or should all such cases count as "Pending"?**

Such intakes should not be included in the data at all, because the caller is not provided any service other than a transfer/referral to another organization. However, the case should be included in the data under "Advice provided" if you close the case with advice prior to referring or transferring the case.

- **We do intake and sometimes refer eligible individuals to a *pro bono* program because we do not have the resources to represent them. How should these cases be categorized?**

If the *pro bono* program to which you are referring these individuals is a subgrantee, those cases should be classified as “Served,” because they are being served with your resources and are eligible for LSC-funded aid. However, if you are referring them to a program that is not a subgrantee, then those cases should be classified as “Unable to Serve.”

- **Should we include information concerning people who come to a help desk or self-help center where no eligibility assessment is conducted?**

You should not include information concerning people who come to a help desk or self-help center where no eligibility assessment is conducted, as they are not making an application for services and eligibility would not be determined in any event.

- **We are a hotline that has installed audio and online triage mechanisms to guide people away if they're not eligible. The chances of a non-priority case getting through is not very high, although it sometimes happens. What would you suggest?**

The survey data should only include information concerning people who have applied for services, so you should not include those who are turned away through an online triage tool. You may include those who were turned away through a telephone triage if you get sufficient information.

**b) PRE-SCREENING INDIVIDUALS BEFORE FINANCIAL ELIGIBILITY DETERMINATION**

(added March 7, 2017)

- **If your program prescreens individuals for conflicts or subject matter area and determines that the individual is ineligible for services prior to screen for financial eligibility, how should we classify those individuals?**

--If the individual is ineligible because they are a noncitizen or have a problem that is barred by LSC regulations (such as a criminal case), use “Unable to Serve – Ineligible.”

--If the individual calls with an issue that is within your program priorities, but the program cannot represent that person because of a conflict, use “Unable to Serve – Conflict of Interest.”

--If the individual calls with an issue that is outside of program priorities, use “Unable to Serve—Outside of Program Priorities.”

**c) PAI SUBGRANTEES**

- **Should PAI subcontractors of grantees participate in the study?**

Yes, but make sure to let us distinguish that information and let us know that it is coming from a sub-grantee. Please fill out a separate matrix for each sub-grantee.

**d) AGRICULTURAL WORKER AND NATIVE AMERICAN SERVICE AREAS**

- **Should we be counting intakes for agricultural worker and Native American service areas?**

Yes, if practicable.

e) **CLIENTS SERVED WITH NON-LSC FUNDS**

- **Should we include data on cases that we know will not be CSR-eligible or clients who are served using non-LSC funds?**

You should not include data on cases that will not be CSR-eligible. People served with non-LSC funds who are not eligible for LSC-funded representation should not be included in the survey. However, if you use non-LSC funds to serve a client who would otherwise be eligible for LSC-funded representation, that case should be included in your data.

- **If some staff are not LSC-funded, should we count their intake or cases?**

If the applicants these staff serve are not eligible for LSC funding, do not include their cases in the study. However, if the applicants these staff serve are eligible for LSC funding, and you would otherwise be reporting those cases to LSC, include the cases in the study.

f) **CLIENTS WITH MULTIPLE LEGAL ISSUES**

- **If one client has two separate legal issues, should we count each case separately within the data?**

Refer to the CSR Handbook for guidance as to whether the legal issues should be counted as separate cases.

- **Should we track only those clients who initially seek services during the reporting period, or should we also include existing clients if, during the reporting period, we learn of additional legal issues that they are facing?**

If you are considering providing services regarding a new, separate case, even if the case is presented by an existing client, include the case in your data.

- **If we provide full representation to a client regarding an issue that is within our priorities, but the same client also has a need for representation in an area not within our priorities, and we refer him or her to another source for the second case, how should we categorize the second case?**

If the second issue would be regarded as a separate case according to the CSR Handbook guidelines, then you should report it separately from the first case under “Unable to Serve—Outside of Priorities.”

- **If we are able to serve a client fully with part of the case (possession in an eviction case), but not able to serve in the rest of the case (money damages), do we count that as 2 cases or just one Able to Serve fully case?**

**(Added March 7, 2017)**

In this instance, the eviction case would be classified as “Fully Served.” The money damages part of the case would be classified as “Unable to Serve” because your program is not representing the client in that case. Use “Unable to Serve—Outside of Program Priorities.”

g) **CSR QUESTIONS**

- **What is the difference between providing a client with legal information and providing a client with assistance that results in closing the case under an “A” closure designation?**



A closing code of “A” indicates that you have provided *advice* specific to the client’s actual situation and problem, as opposed to providing the client with general legal *information*. If you give advice to a client about his or her situation specifically, the case should have a closing code “A.” Please refer to the CSR Handbook for further explanation.

- **Why is disposition code “L” included under “Provision of limited services,” despite being an extended service category?**

We made the decision to include it under limited services just for these purposes, because it’s a unique extended case service code. However, when you record those cases for GAR reporting and regular CSRs, it is still considered extended representation.

- **Your answer concerning clients served with non-LSC Funds tells us to only report on CSR-eligible people. Is it fair to say that we may report on people who appear to be CSR eligible? By this I mean that at the time we make the report, the case is CSR eligible -- acknowledging that, for example, we sometimes we learn belatedly that the client is over income and the case would not be LSC eligible after all.**

You are correct. Your categorization should be based on your best judgement at the time.

#### h) UNABLE TO SERVE CATEGORY

- **Under “Unable to Serve,” should we include callers who are turned away or screened out without being sent for a full eligibility intake screening?**

If the potential client has a case outside of priority, the case should be reported as “Unable to serve—outside of priorities.” Additionally, all cases barred by LSC regulations should be reported as “Unable to Serve—Ineligible.”

- **Are we to list over-income as well as criminal as ineligible?**

Yes, criminal cases and persons who do not meet your financial eligibility criteria should be listed as “Unable to Serve—Ineligible.”

- **If we decide to provide a client with extended service, but the client disappears, should that be reflected in the survey?**

If the client disappears during the reporting period, it should be reported in the survey under “Unable to Serve—Other Reason.”

- **If a potential client lives in our service area, but we do not provide him or her with legal information or pro se resources because he or she has a legal problem in a different service area, what category of “Unable to Serve” would be appropriate?**  
“Unable to Serve—Outside of Priorities” would be most appropriate if the case is outside of your service area.

- **How should we categorize cases that we refer to a private attorney at a reduced fee?**

If the client is LSC-eligible but pays a fee for the services he or she receives, the case should be categorized as “Unable to Serve—Insufficient Resources.”

i) **UNABLE TO SERVE FULLY CATEGORY**

- **If we provide a client with limited services, but do not have the resources to fully resolve his or her legal issue, how should we classify the case?**  
The case should be classified as “Unable to Serve Fully.”

j) **FULLY SERVED CATEGORY**

- **What constitutes “Fully Served—Provision of Legal Information or Pro Se Resources”?**  
This would include services such as provision of self-help forms or assistance at a help desk. If they’re fully served with pro se resources, then it’s going to be something that you feel has satisfied their needs for services and they’re fully served. This does not include cases where you provide the client with advice or other limited services that result in a CSR.
- **Does “Fully Served” indicate cases closed during the reporting period that were opened at any time, or only cases *opened and closed* during the reporting period?**  
“Fully Served” indicates cases opened during the reporting period that you have accepted for extended representation. However, if you have not yet made a decision to provide extended service, the case should be classified as “Pending.” See the memo for fuller definitions and explanations.

k) **PENDING CATEGORY**

- **How is a “Pending” case defined?**  
A “Pending” case is a case in which you have not yet made a decision about the level of service you are going to provide.
- **Does the “Pending” category cover only new requests for assistance during the reporting period, or does it also cover requests for assistance made prior to the reporting period?**  
The “Pending” category covers only new requests for assistance during the reporting period.
- **If you have taken a case and given legal advice, but are considering providing extended service, should that be reported as “Pending” or “Fully Served”?**  
If you have given legal advice and are considering providing extended service, but have not yet made a decision, the case should be reported as “Pending.”
- **We accept many cases for additional research before we make a decision about whether to provide the client with extended representation. How should we categorize such cases?**  
If you have accepted the case but have not yet determined the level of service, that case should be classified as “Pending.” However, if the case seems especially likely to become an extended case, you should use your judgment to decide whether to classify it as “Pending” or “Fully Served.”

- **If we accept a case *pro bono* that is within the program's priorities, but have not yet found a private attorney to take the case, how should the case be classified?**  
The case should be classified as "Pending."

**l) WHICH CASES TO COUNT**  
(Added March 7, 2017)

- **Do we count cases opened prior to March 6 that are closed during the data collection period or does LSC only want data on cases that are opened between March 6 and April 14, 2017?**

Only count cases that are opened during the data collection period. Please note that the case need only be opened during the data collection period, it does NOT have to be closed by April 14, 2017.

**m) REFERRAL TO BRIEF ADVICE CLINICS**  
(Added March 7, 2017)

- **We refer applicants to brief advice clinics where they will receive some legal advice from an attorney – if they go. Is this unable to serve – outside case acceptance priorities? Even though they will get advice if they go?**

If you are sponsoring the clinic, then the best category is "Unable to Serve Fully—Insufficient Resources—Provision of Legal Information or Pro Se Resources, or Provided Limited Service or Closing Code 'L'", if the case will be counted as a CSR. If you do not sponsor the clinic, use "Unable to Serve – Outside of Case Acceptance Priorities."

**n) TRACKING SUBSTANTIVE ISSUES ON THE MATRIX**  
(Added March 7, 2017)

- **The LSC Survey matrix lists substantive legal practice areas in the center of the matrix form. Does this mean that our reportable data should reflect substantive areas of requests for services only for those we serve, partially and fully, and that for people who contact us for assistance but whom we are unable to serve at all for the listed reasons, we need not separate the data into substantive areas of practice?**

That is correct. You only need to collect the substantive areas for those individuals who you are tracking as "Unable to Serve Fully" and "Fully Served." You do not have to track substantive areas for those you are "Unable to Serve."

**o) LOGISTICAL QUESTIONS**

- **Under each category, we may have different people collecting different parts for the survey. How do we handle that?**

We understand that this can be a logistical challenge, because you can do intake in a number of different ways and from different offices. If there are different people in the program collecting different pieces of the data, one person needs to collate and bring together all of the data when it is reported to us so we can get one number and not multiple forms with the data from multiple offices or staff. **It may be helpful to make a [Google Sheets](#) document, which can be shared with multiple users at the same time.** The matrix that LSC provided can be copied over to a Google Sheet and shared with a select

group of users. At the end of the process, the link to your organization's Google Sheet can then be sent to LSC.

- **Should our program use its case management systems to track this information?**

If your case management system has the capacity to track this information, that would be the best way to track this information.

- **When is the Unable to Serve data due to LSC?**

The data will most likely be due on April 28, two weeks after the conclusion of the reporting period.

## **II. NORC SURVEY**

- a) **Where can we find the survey instrument so that we can use it ourselves?**

We will make the survey instrument available to all grantees once we have released our findings, most likely by May 1.

- b) **How closely representative (demographically) is the survey population of the national population of people under 125% of the poverty line?**

We will use industry standard techniques to “weight” the survey data. Weighting the data allows us to make estimates that are representative of the national population of households at or below 125% of the poverty line.

LSC 2017 Census Intake Survey Tool for Justice Gap Study (Note: LSC is currently revising the survey instrument)

UNABLE TO SERVE							UNABLE TO SERVE FULLY -- INSUFFICIENT RESOURCES		FULLY SERVED			PENDING
Unable To Serve -- Ineligible	Unable to Serve -- Conflict of Interest	Unable To Serve --Outside of Program Priorities or Case Acceptance Guidelines	Unable To Serve --Insufficient Resources	Unable to Serve -- Other Reasons			Unable to Serve Fully-- Insufficient Resources -- Provision of Legal Information or Pro Se Resources that were not expected to fully resolve the case.	Unable to Serve -- Insufficient Resources -- Provided Limited Service	Fully Served -- Provision of Legal Information or Pro Se Resources	Fully Served -- Provision of Limited Services	Fully Served -- Extended Service Case Accepted	Pending -- the individual's issue is being reviewed for a final case acceptance decision.
Unable to Serve because Individual is ineligible	Unable to Serve Because a Conflict of Interest is Present -- No Service Provided	Unable to Serve because the individual's problem is outside the program's case acceptance guidelines.	Unable to Serve because the program does not have sufficient resources to take on the individual's case, and the program did not provide any help other than a referral to another organization.	The individual did not receive legal assistance for other reasons such as the person did not follow through or there is a loss of client contact			Unable to Serve Fully, but provided legal information or pro se resources.	Unable to Serve Fully, but provided Advice and/or Limited Action (Includes: Closing Codes: A, B, or L)	Fully Served -- Provided legal information or pro se resources which were expected to fully resolve the case.	Fully Served -- the individual's issues were not that complex and could be fully addresssed with advice and/or Limited Action (A, B,or L).	Program had the resources available to accept the client's case for extended service.	The program has yet to make a decision about what level of serve to provide the individual.
					1	Consumer						
					2	Education						
					3	Employment						
					4	Family						
					5	Juvenile						
					6	Health						
					7	Housing (other than foreclosure)						
					8	Foreclosure						
					9	Income						
					10	Individual						
					11	Miscellaneous						
					12	TOTAL						