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April 20, 2015

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K St. NW
Washington, DC 20007

Re: Comments on Agricultural Worker Population Data for Basic Field—Migrant Grants

Dear Mr. Freedman:

These comments are written in response to the Legal Services Corporation’s “Request for Comments—Agricultural Worker Population Data for Basic Field—Migrant Grants” published in the Federal Register on February 3, 2015, requesting comments by March 20, 2015, extended to April 20, 2015.

Iowa Legal Aid is a statewide program that is currently required to segregate a small amount of its basic field grant to provide specialized outreach and legal assistance to migrant agricultural workers. Iowa Legal Aid’s Migrant Grant for 2015 is \$37,740. The proposed method of basing migrant grants on all hired, agricultural workers increases the number of eligible agricultural workers in Iowa by 750.1%, which will presumably increase the required, segregated, migrant funding by the same percentage.

We appreciate LSC’s efforts in gathering and analyzing the information in the “LSC Agricultural Worker Population Estimate Update: LSC Management Report to LSC Board of Directors” and recognizing the need to base migrant funding on information that is current and accurate. Our experience supports LSC’s conclusion that most migrant agricultural workers and their dependents continue to face unique legal needs and barriers to access and that there is an ongoing need for funding the specialized delivery of legal services to migrant workers. As explained below, however, we disagree with the proposal to expand the categories of agricultural workers who are counted in determining the level of migrant funding to include all hired agricultural workers, regardless of their migrant status. We urge LSC to base migrant grants on the number of migrant agricultural workers in a state, in contrast to using the number of both migrant and non-migrant agricultural workers.

If LSC does not limit migrant grants to serving only migrant agricultural workers, then LSC should remain flexible in the implementation of the new numbers on which migrant funding will be based. LSC should retain discretion to appropriately adjust migrant funding in specific

circumstances to ensure the most effective and efficient delivery of services to agricultural workers.

We have reviewed the draft comments of the NLADA Agricultural Worker Project Group regarding the proposed method of allocating Migrant Grants. We agree with the NLADA Agricultural Worker Project Group's conclusions that the proposed population data excludes various LSC-eligible groups that should be included in the population on which migrant funding is based, and that the poverty calculations overstate the number of workers in Iowa and other states with a large number of livestock workers because of the differences in wages and working hours between crop workers and livestock workers. We also agree with the NLADA Agricultural Worker Project Group that both basic field and migrant programs will need flexibility and additional time to implement the proposed changes and that LSC should lengthen the phase-in period to three years, with the phase-in beginning in 2017.

Continue Basing Migrant Grants on the Number of Migrant Agricultural Workers and Their Dependents, Instead of on all Hired Agricultural Workers.

LSC's study regarding migrant funding that was issued in 1979 concluded that migrant agricultural workers needed special funding because they had distinctive and unmet special legal problems requiring specialized legal expertise and knowledge, that the types and conditions of their work were unique, and that they faced barriers in accessing legal assistance because of their cultural and ethnic backgrounds. In the ensuing decades, migrant funding has been allocated on the basis of the migrant population only, even though programs have also been allowed to use the funding to serve non-migrant, seasonal agricultural workers.

LSC is now proposing that migrant grants be based on the number of migrant and seasonal crop workers, horticultural workers, livestock workers, certain forestry workers, and these workers' dependents. This change in the countable population includes migrants and non-migrant, seasonal workers. It also includes hired, agricultural workers who are neither migrants nor seasonal workers, even though Section 1007(h) of the LSC Act only specifies migrants or seasonal farm workers as the types of agricultural workers who should possibly receive earmarked funding.

As explained in the LSC Management Report to LSC Board of Directors, LSC Agricultural Worker Population Estimate Update at p. 15, the LSC Section 1007(h) Study set forth the following rationales for earmarking funds for migrant agricultural workers:

- Physical barriers, *e.g.*, distance, migrants' lack of transportation, work hours that conflict with legal services office hours, and housing in labor camps to which legal services personnel are denied access;
- The limited time migrants are in a program's service area;
- Migrants' limited English proficiency;
- The inability or unwillingness of migrants to communicate about their working and living conditions, which "is because of their almost absolute economic dependence upon their employers and crew leaders;" and

- Migrants' view that the legal system is not a favorable means of resolving disputes and their reluctance to seek the assistance of legal aid programs.

LSC's new proposal for determining migrant funding is inadvisedly expansive because the majority of the rationales advanced by LSC in the Section 1007(h) Study do not apply to non-migrant agricultural workers. Specialized funding should instead be limited to migrant workers who migrate from state to state, or even within a state, for short periods of time to perform agricultural labor. Migrant workers have no permanent home in many of the states in which they work. They are generally almost totally dependent on their employers for income, housing, transportation and socialization. They often have limited proficiency in English and remain culturally distinct from the rest of the local communities in which they temporarily work. The legal problems they encounter are also oftentimes distinct from other low-income residents of the states in which they temporarily work because of the migratory nature of their employment.

In contrast, Iowa and many other states have thousands of non-migrant, agricultural workers who permanently live in and are integral parts of the communities in which they work and live. Some of the non-migrant workers are seasonal workers, but many are non-seasonal workers. Although sometimes dependent on their employers for income, these non-migrant workers own or rent permanent homes near their work locations and they reside in them year-round. Their status as non-migrants greatly reduces their dependence on their employers because of their increased abilities to find other employment in their home communities. They generally have their own transportation that can be used to go to work and to obtain legal assistance. Although they sometimes have legal problems related to their agricultural employment, most of their legal problems are no different from the legal problems of other low-income people in their communities and can most efficiently and effectively be handled by basic field staff. The legal problems related to their agricultural employment can then be handled by or with the assistance of the attorneys in our migrant project.

Most significantly, non-migrant workers do not face the same language and cultural barriers as migrant workers and they have no more barriers to access to legal assistance than other low-income people in their communities. In short, non-migrant agricultural workers do not face most of the barriers to access to legal services that LSC's Section 1007(h) Study articulated as the rationale for earmarked funding for legal assistance to migrant agricultural workers. Non-migrant agricultural workers do not need segregated funding for specialized legal services. Their needs are much more like the workers in the meat and poultry processing plants who have not been included in the population to receive agricultural worker funding. If meat and poultry processing workers are being specifically excluded from the definition of agricultural worker for purposes of receiving special funding, so should non-migrant agricultural workers.

In states like Iowa, the main effect of including non-migrant agricultural workers in determining the allocation of migrant funding will be to increase administrative costs and paperwork. Basic field grants are already used to provide outreach services to non-migrant, agricultural workers, including those with limited English proficiency. Basic field grants are also already used to provide legal assistance to non-migrant agricultural workers. The proposed expansion will not substantially change services received by non-migrant clients, but it will require basic field programs to ask thousands of non-migrant clients specific questions about where and for whom they and their dependents work in order to determine whether the clients should be served with migrant funds instead of with basic field funds.

For example, when residents of rural areas call Iowa Legal Aid for help with a domestic abuse problem, they are asked their income and other eligibility questions. The new proposal will now require asking additional questions about the source of the income to determine whether the income of the client or of the members of the client's family is from the appropriate type of agricultural employment. In addition, other administrative steps will be needed to ensure that non-migrant agricultural workers are tracked to the migrant funding instead of to the basic field grant. In short, we will need to jump through all of these additional hoops to provide services to non-migrant agricultural workers who we already serve with basic field grant funds, with no corresponding benefits to the clients. This does not improve the efficient and effective delivery of services.

Proponents of expanding the population on which to base migrant grants to cover all hired, agricultural workers, instead of just migrant workers, argue that laws that cover agricultural workers are complicated and require attorneys with special expertise. Although agricultural laws are complicated and require attorneys with special expertise, the laws are no more complicated and require no more special expertise than laws involving Medicaid, Medicare, foreclosure, consumer protection, multi-state family law issues, disability rights, healthcare, taxes and the myriad other issues that poverty law attorneys deal with everyday. LSC does not require segregated funding to ensure competent representation in all of these other areas despite the complexities of the laws.

In reality, the reason for requiring segregated funding for migrant agricultural workers is not the complexity of the laws that protect them. Instead, the real, defensible rationale for segregated migrant funding is the fact that most migrant workers travel away from their homes to live and work in a new culture where they cannot effectively communicate, and they become almost completely dependent on their employers for income, housing, transportation and access to services. These problems that are routinely faced by migrant workers are not faced by seasonal and other hired agricultural workers who remain living in their homes and home communities while engaging in agricultural employment.

The distinction between migrant agricultural workers and non-migrant agricultural workers has historically been recognized by LSC, as evidenced by LSC President John McKay's letter of June 19, 2000. President McKay, in distinguishing the services that were to be provided by basic field programs and migrant project, stated that basic field programs:

- a) and not the migrant project should represent those farmworkers who do not or no longer migrate on non-status related issues:
- b) should permit the migrant project to represent those farmworkers who do not or no longer migrate on status related issues. However, if the migrant project's representation of these farmworkers is substantial, LSC encourages the parent program to compensate the migrant project accordingly.

In short, President McKay recognized the distinction between migrant and non-migrant workers and directed that migrant funding should not normally be used to represent non-migrants. In addition, if migrant projects in fact provide substantial representation of non-migrants, then the projects are to receive additional compensation from basic field grants. Since migrant projects are primarily funded to provide services to agricultural workers who migrate, the funding should continue to be based on agricultural workers who migrate, and not on other workers.

Limiting migrant funding to clients who are actually migrants does not prevent programs from providing additional funds from their basic field grants to the migrant programs that they operate or contract with in order to provide additional services to non-migrant, agricultural workers, just as President McKay encouraged, and just as programs can decide to allocate funding to provide services to people with disabilities or to victims of domestic abuse. Those priority decisions, however, should be left to individual programs since the national reasons to provide specialized funding to migrants do not apply to non-migrant agricultural workers.

Therefore, the proposed definition of migrant funding should continue to be based on the number of migrant agricultural workers who have legal needs and access barriers that are significantly different from the rest of the low-income population. The funding should not be based on agricultural workers who are not migrants.

LSC Should Retain Discretion to Appropriately Adjust Migrant Funding in Specific Circumstances to Ensure the Most Effective and Efficient Delivery of Services to Agricultural Workers.

Since the new numbers are based on a top-down process using national and regional data that may not accurately reflect the composition of agricultural workers in each and every state, LSC should remain flexible in the implementation of the new numbers on which migrant funding will be based. LSC should retain the discretion to adjust the level of migrant funding in specific states when circumstances in a state indicate that the best way to provide effective and efficient services to agricultural workers in the state justify an adjustment.

For example, in states where the migrant funding is dramatically increasing, the states may be able to show that a substantial segment of the increased agricultural worker population includes non-migrant workers whose access to legal assistance is not restricted by their employers, language and cultural norms. They may also be able to show that most of the legal problems faced by the non-migrant workers can best be handled by basic field staff, while allowing staff funded by the migrant grant to address the legal issues related to their status as agricultural workers. In those situations, and in other appropriate circumstances, the programs should be allowed to show that it would be more effective and efficient to reduce the amount of funds diverted to migrant grants to the amount of funds needed to fully represent migrants on all legal issues, and to provide representation to non-migrants about status related issues.

States should also be allowed to show that local data exists that provides a more reliable picture of agricultural employment in the state and that the level of migrant funding in the state should be based on the local data.

Provide a Three-Year Phase-In Period Beginning in 2017

The expansion of the definition of the population that will be used to allocate migrant funding will result in significant, disruptive changes in the current national legal service delivery system. If there are not significant changes in the proposed allocation of migrant funds, the phase-in period for the change should be three years, beginning in 2017, rather than two years. Three years has been used in the past when there have been significant changes in basic field grant funding as a result of fluctuations in the low-income population. The changes required by the current allocations are no less significant and are indeed more significant than many changes in the past for the basic field grant.

The new funding formula results in many programs being required to significantly reduce their staff and services to agricultural workers, while other programs will be required to earmark significantly more funding to services for agricultural workers and will need to make significant administrative changes to ensure that services are allocated to the correct LSC funding. LSC will need to be flexible in implementing the new requirements, and will need to provide resources, training and guidance to help programs with these transitions. Three years allows a longer time for programs, with the help of LSC, to prepare to meet the new challenge, whether caused by increases or decreases in migrant funding.

Thank you for your careful consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Dennis Groenenboom". The signature is written in a cursive, flowing style.

Dennis Groenenboom

Executive Director

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