

MEMORANDUM

To: Operations and Regulations Committee

From: Ronald S. Flagg, General Counsel *RF*
Bristow Hardin, Program Analyst III *BH*
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Re: Estimate of the Population of Agricultural Workers Eligible for LSC-Funded Services Pursuant to 45 C.F.R. § 1626.4—Anti-Abuse Laws

Date: January 20, 2016

I. Introduction

On February 3, 2015, the Legal Services Corporation (LSC) published a notice in the Federal Register, 80 Fed. Reg. 5791 (Public Notice), requesting comment on a proposal to recalculate the distribution of funds through Basic Field—Migrant grants based on new population estimates obtained from the U.S. Department of Labor (DOL) Employment and Employment Training Administration (ETA). The ETA estimate of the agricultural worker population eligible for LSC-funded services includes only those persons who meet the LSC eligibility criteria regarding citizenship and alien status as set forth in Part 1626 of the LSC Regulations. The Public Notice reflected management's recommendation¹ that LSC reduce the population estimates by 50% to exclude agricultural workers and dependents who are non-U.S. citizens without authorized alien status.² Management recommended that LSC limit the population estimates to the extent credible data show that a

¹ Legal Services Corporation, *LSC Agricultural Worker Population Estimate Update. LSC Management Report to LSC Board of Directors.* (JANUARY 30, 2015), <http://www.lsc.gov/about-lsc/matters-comment/agricultural-worker-population-estimates>.

² "NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS), PUBLIC DATA SETS," U.S. Department of Labor, Employment and Training Administration, last modified DECEMBER 11, 2015, <http://www.doleta.gov/agworker/naws.cfm>.

material proportion of the agricultural worker population would not likely qualify for LSC-funded services.

Several comments filed in response to the Public Notice questioned whether the exclusion of all unauthorized farmworkers from the estimates caused a material undercount of the numbers of farmworkers eligible for LSC-funded services because of the failure to include unauthorized farmworkers who **could** be eligible for LSC-funded services pursuant to Congressionally-specified anti-abuse statutes. *See* 45 C.F.R. § 1626.4. ETA did not include in its estimate any individuals eligible pursuant to these anti-abuse statutes and 45 C.F.R. § 1626.4, because it could not identify data sets that would enable it to make population estimates consistent with its standards of accuracy. As a result, the published estimates implicitly assume that **no** unauthorized farmworkers are eligible for LSC-funded services.

That implicit assumption is inconsistent with statutes that explicitly authorize representation of unauthorized individuals who have been subject to abuse, sexual assault, trafficking, or certain other crimes, and with both public and private data that demonstrate that significant numbers of farmworkers are subject to such crimes and therefore eligible for LSC-funded services based on the provisions of 45 C.F.R. § 1626.4. Although these data do not permit a precise estimate of the numbers of such farmworkers, they do support estimates of such eligible farmworkers that are far more reasonable than the 0% reflected in the Public Notice. As described below, we estimate that 26.2% of unauthorized female farmworkers living in poverty and 16.3% of unauthorized male farmworkers living in poverty are eligible for LSC-funded services pursuant to 45 C.F.R. § 1626.4. We recommend modifying the original ETA estimates to include these additional populations of eligible workers.

II. Eligibility of Aliens for Services from LSC-Grantees Pursuant to 45 C.F.R. § 1626.4

Congress restricts client eligibility for LSC-grantee services to U.S. Citizens and statutorily-defined categories of aliens. LSC implemented these restrictions at 45 C.F.R. Part 1626. Generally, LSC grantees cannot represent non-U.S. citizens, although Congress provided exceptions for aliens with specific types of immigration status, *e.g.*, permanent residence or lawful presence related to natural disasters. Additionally, Congress provided that the alienage restrictions do not apply to victims of abuse, sexual assault, trafficking, or certain other crimes or acts of violence. LSC implemented those statutory provisions in 45 C.F.R. § 1626.4—Anti-abuse laws.

For this analysis, we have placed the victim statuses that would make aliens eligible for LSC-funded services into two categories that correspond to available data:

1. *Sexual- and physical violence-related crimes:* rape, sexual assault, abusive sexual contact, domestic violence, physical violence, stalking, and battering.
2. *Forced labor and labor trafficking-related crimes:* being held hostage, peonage, involuntary servitude, labor trafficking, and fraud in foreign labor contracting.³

³ Although trafficking has been classified as a subset of forced labor crimes, the differences between them have become blurred in definitional and practical terms. We exclude sex trafficking because sex trafficking for economic purposes is different from other forms of labor trafficking. *See e.g.*, International Labor Office, *ILO Global Estimate of Forced Labour—Results and methodology* (2012), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf; Urban Institute, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States* by Colleen Owens, Meredith Dank, Justin Breaux, Isela Bañuelos, Amy Farrell, Rebecca Pfeffer, Katie Bright, Ryan Heitsmith, and Jack McDevitt (2014), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413249-Understanding-the-Organization-Operation-and-Victimization-Process-of-Labor-Trafficking-in-the-United-States.PDF>.

These categories correlate well with the § 1626.4 qualifications and correspond to available studies that provide useful estimates of rates of occurrence in relevant populations.

III. Data Regarding Crimes of Sexual and Physical Violence

Data focusing on the farmworker population subjected to sexual and physical violence are scarce, in part because of the geographic, social, economic, and cultural isolation of farmworker women. A reasonable estimate of the numbers of farmworkers subject to such crimes can be made, however, based on government data regarding rates of sexual and physical violence against women in the general U.S. population. Studies that have identified factors that tend to increase the prevalence of these crimes against farmworker women and data from relevant small-scale surveys indicate that the prevalence of these crimes against female farmworkers may well be higher than against women in the general population, although these data do not, in our view, provide a reasonable basis for adjusting the general population data.

A. Sexual- and physical violence-related crime rates in the general population

The Centers for Disease Control and Prevention (CDC) and the Department of Justice (DOJ) are the primary sources of data regarding the prevalence of sexual and physical violence among the U.S. population.⁴ The most recent CDC report on

⁴ See National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *Intimate Partner Violence in the United States — 2010* by Matthew Breiding, Jieru Chen, and Michele Black (2014), http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf; U.S. Department of Justice, Office of Justice Programs, *Extent, Nature, and Consequences of Intimate Partner Violence, Findings From the National Violence Against Women Survey*. NCJ 181867 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>; National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States* (2003), <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>; U.S. Department of Justice,

intimate partner violence (IPV) showed that, in their lifetimes, 9.4% of women have been raped, 15.9% have experienced sexual violence other than rape,⁵ and 10.7% have experienced stalking in which the victim “felt very fearful or believed that they or someone close to them would be harmed or killed.”⁶ Furthermore, 32.9% of women have experienced physical violence other than sexual violence.⁷

Women of color and women experiencing economic stress experience higher rates of these acts. The twelve-month prevalence of rape, physical violence, or stalking by intimate partners is 5.1% for White women; 8.1% for Hispanic women; and 9.2% for Black women.⁸ Categorized by income, these rates are 9.7% for women with annual household incomes under \$25,000 and 2.8% for women in households with annual incomes greater than \$75,000.⁹ Lastly, these rates are 11.6% for women experiencing food insecurity and 10.0% for women experiencing housing insecurity.¹⁰

The CDC also gathered data on acts of “coercive control,” examples of which include threats of physical harm, physically harming loved ones, threatening to physically harm loved ones, trying to isolate one from family and friends, limiting mobility,

Bureau of Justice Statistics, *Family Violence Statistics: Including Statistics on Strangers and Acquaintances* by Matthew Durose, Caroline Wolf Harlow, Patrick Langan, Mark Motivans, Ramona Rantala, and Erica Smith, NCJ 207846 (2005), <http://www.bjs.gov/content/pub/pdf/fvs02.pdf>; U.S. Department of Justice, Bureau of Justice Statistics, *Nonfatal Domestic Violence, 2003–2012*, NCJ 244697 (2014), <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>; U.S. Department of Justice Bureau of Justice Statistics, *Intimate Partner Violence, 1993–2010* by Shannan Catalano, NCJ 239203 (2012), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

⁵ *Intimate Partner Violence in the United States — 2010*, supra note 4 at 14.

⁶ *Id.* at 17.

⁷ *Id.* at 15.

⁸ *Id.* at 30, Table 3.3.

⁹ *Id.* at 32, Table 3.6.

¹⁰ *Id.* at 34, Table 3.8.

threatening to take away children, and denying access to money.¹¹ The CDC determined that 41% of women have been subjected to “coercive control” by an intimate partner in their lifetimes¹² and found a twelve-month prevalence rate of 10.7%.¹³

B. Increased Prevalence of Sexual and Physical Violence for Farmworker Women

Government and other research studies have identified a range of factors that can increase the prevalence of sexual and physical violence for farmworker women compared to women in the general population.¹⁴ Compared to other women in the U.S., farmworker women (1) are far more likely to be immigrants unfamiliar with U.S. laws, (2) have significantly lower levels of educational achievement and

¹¹ *Id.* at 19, Figure 2.5.

¹² *Id.* at 19, Figure 2.5.

¹³ *Id.* at 20.

¹⁴ Among others, see Maria Dominguez, “Sex Discrimination and Sexual Harassment in Agricultural Labor,” *Journal of Gender and the Law* 6 (1997); Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment* by Grace Meng (2012), <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>; Oxfam America, *Working in Fear. Sexual violence against women farmworkers in the United States* by Sara Kominers (2015), <https://www.northeastern.edu/law/pdfs/academics/phrge/kominers-report.pdf>; Southern Poverty Law Center, *Injustice on Our Plates—Immigrant Women in the U.S. Food Industry* by Mary Bauer and Mónica Ramírez (2010), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/Injustice_on_Our_Plates.pdf; William Tamayo, “Forging Our Identity: Transformative Resistance In The Areas Of Work, Class, And The Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers,” *U.C. Davis Law Review* 33 (2000) at 1057; William Tamayo, “Rape, Other Egregious Harassment, Threats of Physical Harm to Deter Reporting, and Retaliation,” *American Bar Association* (November 2011), http://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2011/ac2011/036.authcheckdam.pdf; Equal Employment Opportunity Commission, *Selected List of Pending and Resolved Cases Involving Farmworkers from 1999 to the Present (as of August 2014)*, http://www.eeoc.gov/eeoc/litigation/selected/farmworkers_august_2014.cfm; Irma Morales Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *Violence Against Women* 16 (2010) at 237.

proficiency in English, (3) are nearly twice as likely to live in poverty,¹⁵ (4) are more likely to live and work in geographically isolated areas, and (5) are less likely to trust law enforcement or the justice system.

These circumstances are further intensified by the imbalance of authority and control between workers and their employers and supervisors. Perpetrators may be in positions of power, with the authority to hire, fire, set wages, and provide or deny benefits such as better hours or work assignments. They may control whether and when workers are paid and may control workers' access to housing. In addition, unauthorized workers may believe that they risk deportation if they confront their abusers, especially if they are not aware of their legal rights. Congress recognized these concerns when it enacted laws permitting LSC grantees to represent these individuals notwithstanding their immigration status.

¹⁵ Immigrants compose 73% of farmworker women, and 100% of unauthorized farmworker women, compared to 13% of the total population. About 49% of farmworker women are unauthorized aliens, but only 5% of all workers are unauthorized. In 96% of U.S. households, at least one member 13 years and older speaks English "very well." In contrast, only 32% of farmworker women, and only 5% unauthorized farmworker women in poverty, speak English "well." The mean highest grade completed by women farmworkers and unauthorized female farmworkers are 8th and 6th, respectively. In contrast, only 13% of all 18–24-year-old U.S. women have not graduated high school and only 6% of women over 25 years have not completed the ninth grade. Thirty-one percent (31%) of farmworker women in the U.S. have annual incomes below the poverty line, compared with 17% of all women in the U.S. The mean annual household income for all farmworker women and farmworker women in poverty are \$18,750 and \$13,750, respectively. (The NAWS reports annual incomes in ranges. The incomes reported here are the mid-points of the ranges for these groups.) In contrast, only 13.3% of all U.S. households have annual incomes less than \$15,000 and only 18.8% have annual incomes less than \$20,000. All data above for farmworkers are based on restricted data from the Employment and Training Administration's National Agricultural Workers Survey. All data for the general population are from the U.S. Census Bureau, 2012 *American Community Survey 1-year estimates*, except for the percent of all workers who are unauthorized, which is from Pew Research Center, *Share of Unauthorized Immigrant Workers in Production, Construction Jobs Falls Since 2007: In States, Hospitality, Manufacturing and Construction are Top Industries* by Jeffrey Passel and D'Vera Cohn (2015), http://www.pewhispanic.org/files/2015/03/2015-03-26_unauthorized-immigrants-passel-testimony_REPORT.pdf.

Three studies include survey data from immigrant women working in agricultural settings and similar industries (e.g., meatpacking) about the sexual violence they experienced at work.¹⁶

- Of the farmworker women surveyed as part of a 2006 study conducted by researchers at the University of California, Santa Cruz, 80% reported they had experienced some form of sexual harassment; 42% reported they had been subjected to unwanted sexual attention that ranged from inappropriate and offensive physical or verbal advances to gross sexual imposition, including rape; and 24% reported they had experienced sexual coercion by a supervisor.¹⁷
- As part of a 2010 study, the Southern Poverty Law Center interviewed immigrant women who had worked in the food industry – the fields, food packinghouses or processing plants – in six states. A “majority” of those interviewed said they were subjected “to sexual harassment that, at times, rose to the level of sexual assault.”¹⁸
- The legal research and advocacy group ASISTA surveyed women working at Iowa meatpacking plants in 2009.¹⁹ These survey results are relevant for

¹⁶ Because of the isolated nature of this population, random or “probabilistic” sampling of female farmworkers is not feasible. Instead, these surveys were based on purposive sampling methods such as snowball or convenience sampling approaches. Researchers use these approaches to develop samples that can provide the best understanding of the population being studied. In snowball sampling, existing study participants recruit or identify other participants from among their acquaintances. In convenience sampling, researchers identify participants based on their accessibility or willingness to participate.

¹⁷ Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *supra* note 14. The survey sample included 150 farmworker women in California’s Central Valley. Survey respondents were contacted for participation at community flea markets and community markets.

¹⁸ *Injustice on Our Plates. Immigrant Women in the U.S. Food Industry*, *supra* note 14 at 44. Over 150 women were interviewed. Participants were identified by service providers and other project partners.

¹⁹ Reported in Bernice Yeung and Grace Rubenstein, “Female workers face rape, harassment in U.S. agriculture industry,” *Center for Investigative Reporting*, JUNE 25, 2013, <http://cironline.org/reports/female-workers-face-rape-harassment-us-agriculture>

this analysis because immigrant women farmworker and meatpacking workers often come from the same or similar communities, have similar socioeconomic characteristics, and confront comparable challenges in the workplace. Of those surveyed, 84% said they experienced one or more forms of sexual harassment at work; 41% said they experienced unwanted physical contact; and 26% said they were threatened with firing or demotion if they resisted those advances.²⁰

In combination with the qualitative studies, farmworker women's socioeconomic characteristics, and the dynamics of farmworkers' employment conditions, these data indicate that the prevalence of sexual violence and other crimes against female farmworkers are at least as high as, if not higher than, the prevalence of such crimes against women in the general population.²¹ These data, however, are based on limited samples that were not randomly selected. Accordingly, we do not believe the data provide a reasonable basis for making a precise adjustment to the general population data provided by the CDC.

IV. Data Regarding Forced Labor and Labor Trafficking Among Farmworkers

Data regarding the population of forced labor and labor trafficking victims in agriculture are scarce because these are particularly secretive criminal activities, the population of victims is relatively small and hidden, workers are vulnerable to retaliation, and the victim population is socially, economically and culturally isolated.²² None of the U.S. government entities with statutory mandates to

[industry-4798](#). More than 100 women workers were surveyed. Other information about the study methodology is unavailable at this time.

²⁰ *Id.*

²¹ Based on these factors Equal Employment Opportunity Commission (EEOC) Chairwoman Ida Castro stated that farmworker women are “perhaps the most vulnerable sector of the workforce.” Quoted in Tamayo, “Forging Our Identity”: Transformative Resistance in the Areas of Work, Class, and the Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers,” *supra* note 14.

²² International Labor Office, *Hard to see, harder to count. Survey guidelines to estimate forced labour of adults and children.* (2012), <http://www.ilo.org/wcmsp5/groups/public/--->

identify and combat trafficking and forced labor crimes has published recent estimates of the number of forced labor or trafficking victims in the U.S.²³

Two studies funded by the Department of Justice do provide data about the scope and magnitude of these crimes in agriculture and, in the absence of other government data, we turn to these studies. Both studies used a “conservative (or narrow) interpretation” of trafficking: “actual/threatened infringement of freedom of movement (e.g., holding a migrant hostage in order to extort ransom during transportation) or actual/threatened violation of one’s physical integrity (e.g.,

[ed_norm/---declaration/documents/publication/wcms_182096.pdf](#). See also Prepared for the U.S. Department of Justice, National Institute of Justice, *Indicators of Labor Trafficking Among North Carolina Migrant Farmworkers* by Kelle Barrick, Pamela Lattimore, Wayne Pitts, and Sheldon Zhang, 244204 (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/244204.pdf>; International Labour Office, *ILO Minimum Estimate of Forced Labour in the World* by Patrick Belser, Michaëlle de Cock, and Farhad Mehran (2005); *ILO Global Estimate of Forced Labour. Results and methodology*, supra note 3; Supreme Court of the State of New York, Appellate Division, First Department and New York State Judicial Committee on Women and the Courts, *Lawyer’s Manual On Human Trafficking: Pursuing Justice for Victims*, edited by Jill Goodman and Dorchen Leidhold (2013), Chapters 1 and 2, <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>; *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, supra note 3; Southern Poverty Law Center, *Close to Slavery; Guestworker Programs in the United States* by Mary Bauer (2013), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/Close_to_Slavery.pdf; United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2014*, Sales No. E.14.V.10 (2014), https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf; Verité, *Immigrant Workers in US Agriculture: The Role of Labor Brokers in Vulnerability to Forced Labor* (2010), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2174&context=globaldocs>; San Diego State University, *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County* by Sheldon X. Zhang, 240223 (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf>.

²³ These entities include the Departments of State, Justice, Labor, Homeland Security, and Health and Human Services.

physical or sexual assaults).”²⁴ Victims of these crimes would be eligible for LSC-funded services under the provisions of § 1626.4.

A San Diego county study was designed to “provide statistically sound estimates of the prevalence of trafficking victimization” of unauthorized farmworkers in the county and to identify “the types of trafficking victimization experienced by these laborers.”²⁵ The study found “rampant trafficking violations and gross exploitation of unauthorized workers,” and that a “victims’ legal status [i.e., undocumented] appears to be the most important factor in determining their likelihood of victimization, as few other variables seem to explain much of their experience.”²⁶ For workers in all occupations, the study found a 28% trafficking violation rate by employers;²⁷ the trafficking violation rate by agricultural employers was 16%.²⁸

The study report stated that “the San Diego data provide empirical evidence that labor trafficking and abusive labor practices may indeed be common in areas where

²⁴ *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, supra note 22 at 8; *Indicators of Labor Trafficking Among North Carolina Migrant Farmworkers*, supra note 22 at ES-1.

²⁵ *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, supra note 22. Sheldon Zhang, the study director, is a San Diego State University professor and internationally recognized expert in trafficking. For example, Zhang was a reviewer of the 2014 United Nations global trafficking report. *See Global Report on Trafficking in Persons 2014*, supra note 22 at 2.

²⁶ *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, supra note 22 at 18.

²⁷ *Id.* at 117, Table 4.

²⁸ *Id.* at 120, Table 7. The study’s multiple-methods design included interviews with 826 unauthorized workers primarily employed in the areas of agriculture, janitorial services, food processing, landscaping, construction and manufacturing. The total sample included 826 unauthorized workers, of these 182 were agricultural workers. Calculated from data in *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, *Id.* at 11.

there are large numbers of unauthorized immigrants in the unregulated workforce.” Because the study’s sampling method “allows unbiased estimation of the target population [i.e., victimization rates],”²⁹ the report stated that “one may estimate the size of the victim population by making inference from what we have learned in San Diego County.”³⁰ “Using the San Diego findings to estimate national figures,” the report estimated “there could be as many as 2,472,000 trafficking victims just among unauthorized Mexican immigrants in the U.S., of which 495,293 are in California.”³¹

A North Carolina study sought to “document the characteristics and indicators of labor trafficking . . . [and] . . . “provide law enforcement with actionable knowledge to help identify labor trafficking.”³² It found that 26% of farmworkers were subjected to trafficking offenses.³³ Like the San Diego study, the North Carolina study found that a “worker’s legal status was the strongest and most consistent

²⁹ *Id.* at 6. The study used “Respondent-Driven Sampling” (RDS), which Goździak and Bump identify as one of the “estimation methods that have been gaining currency in studies of hidden populations.” Prepared for the U.S. Department of Justice, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature* by Elżbieta Goździak and Micah N. Bump, 224392 (2008), 10. It should be emphasized, however, that the report acknowledged the study design had “several limitations.” In particular, “the RDS method is still evolving and some researchers are questioning the accuracy of its estimates based on various assumptions.” *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, *supra* note 22 at 18.

³⁰ *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, *supra* note 22 at 16.

³¹ *Id.* at 17. This projection was for all workers. No projections were made for the sizes of the worker subpopulations (e.g., janitorial, construction, agricultural).

³² *Indicators of Labor Trafficking Among North Carolina Migrant Farmworkers*, *supra* note 22 at ES-1.

³³ *Id.* at 32, Table 3.6. Findings are based on interviews with 380 farmworkers in 16 counties in the state.

predictor of experiencing trafficking and other violations.”³⁴ Undocumented workers were subjected to trafficking crimes at more than twice the rates of authorized workers (37% vs. 16%), and farmworker women were subjected to these crimes at much higher rates than men (39% vs. 24%).³⁵

The study report emphasized that the findings are not “generalizable to the population of migrant farmworkers in North Carolina” because it used non-probabilistic sampling methods. The report noted, however, that the “findings most likely represent an *underestimate* of exposure to trafficking and other abuse” because those “who were being held captive and were subjects of the most egregious trafficking practices were not included in [the] study.”³⁶

V. A Methodology to Estimate the Population of Unauthorized Farmworkers Eligible for LSC-Funded Services Under Section 1626.4

The foregoing discussion and data support at least two conclusions. First, the estimates of undocumented farmworkers eligible for LSC-funded services published in February 2015 implicitly assumed that **no** unauthorized farmworkers are eligible for LSC-funded legal services. That assumption is not reasonable. Second, while the data do not permit one to make a precise estimate of the farmworker population subject to crimes related to sexual and physical violence or crimes related to forced labor and labor trafficking, they do permit estimates that are certainly more accurate than an implicit assumption of 0%.

³⁴ *Id.* at ES-4. A study undertaken by the Urban Institute and Northeastern reached the same conclusion. See *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United State*, supra note 3 at VII.

³⁵ *Indicators of Labor Trafficking Among North Carolina Migrant Farmworkers*, supra note 22 at 3-28, Table 3.7.

³⁶ *Id.* at ES-7.

A. Eliminating Duplication from the Data.

In developing such an estimate, we must initially address the following challenge: the population of farmworkers subject to crimes related to sexual and physical violence certainly overlaps, perhaps substantially, with the farmworker population subject to forced labor and labor trafficking. In other words, developing an estimate of the percentage of farmworkers subject to each of these two categories of crime and then adding the percentages to each other would overstate the total percentage of unauthorized farmworkers eligible for LSC-funded services.

To address this challenge, our proposed estimation methodology uses two separate bases for the population estimates. We use **unauthorized female farmworkers in poverty** as the base for the estimate of those eligible based on **sexual and physical violence-related crimes**; we use **unauthorized male farmworkers in poverty** as the base for the estimate of those eligible based on **forced labor and labor trafficking related crimes**. Separate calculations are used to develop the estimates for these populations. The total §1626.4-eligible population estimate is the sum of the estimates of those two population groups.

These separate bases are used in the estimation methodology to eliminate the challenge of duplication identified above and because data are not available to develop separate estimates of numbers of unauthorized male and female farmworkers in poverty who are victimized by sexual and physical violence-related crimes and forced labor and labor trafficking-related crimes. We propose to apply data regarding sexual and other violent crimes to the population of female farmworkers because women are far more likely than men to be subjected to crimes of sexual violence in the general U.S. population, and the available data on farmworkers likewise indicate that women are significantly more likely than to be

victims of these crimes.³⁷ The extent to which male farmworkers are subjected to these crimes will be captured, at least in part, by the forced labor and labor trafficking estimate, because crimes of sexual violence are among the forced labor/labor trafficking qualifying crimes. Likewise, many of the forced labor/labor trafficking crimes to which female farmworkers may be subjected will be captured in the estimate of those subjected to crimes of sexual and physical violence and coercive control. Although this approach is not perfect, we believe that it will yield an LSC-eligible population estimate far more reasonable than the 0% estimate implicitly embedded in the ETA data.

B. Estimation Methodology for Sexual and Physical Violence Qualifying Crimes.

We propose the following methodology to estimate the population of unauthorized female farmworkers who are subject to sexual and physical violence crimes. **Based on this methodology, we estimate that 26.2% of unauthorized female farmworkers with incomes below the federal poverty line are eligible for LSC-funded services under 45 C.F.R. § 1626.4.**

1. The population base is the total number of unauthorized farmworker women who have incomes less than the federal poverty line.

³⁷ As noted in a Department of Justice report, “About 4 in 5 victims of intimate partner violence were female from 1994 to 2010.” *Intimate Partner Violence, 1993–2010*, supra note 4 at 3. According to the most recent CDC data, the lifetime prevalence rates for women of sexual violence other than rape and severe physical violence are about twice the rates for men. (“Too few men reported rape by an intimate partner to produce reliable estimates for overall rape or individual types of rape”) *Intimate Partner Violence in the United States—2010*, supra note 4 at 14, Table 2.1, and Figure 2.1. None of the studies of sexual violence against farmworkers analyze sexual violence against farmworker men. These studies were informed by the view articulated in a Human Rights Watch report: noted, “Although both male and female farmworkers can be victims of sexual violence and sexual harassment, this report focuses on women and girls, for whom the prevalence of abuses is reportedly higher.” *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, supra note 14 at 12.

2. CDC data show that the 12-month prevalence of rape, physical violence or stalking experienced by women throughout the U.S. with incomes less than \$25,000, is 9.7%.³⁸ Based on these government data, we estimate that at least 9.7% of unauthorized farmworker women who have incomes less than the federal poverty line have been subjected to rape, physical violence, or stalking.
3. We estimate that an additional 16.5% of unauthorized farmworker women with incomes less than the federal poverty line have been subjected to acts of coercive control other than rape, physical violence, or stalking, as the CDC study has used those terms.³⁹ We presume that farmworker women experience coercive control at the same rate (or more) as women throughout the U.S. as determined by the CDC. The 16.5% factor is based on the following:
 - a. To avoid duplication, the estimate must account for the overlap between the victims of rape/physical violence/ stalking and the victims of coercive control. The CDC reports that nearly all (92.4%) of women subjected to rape and stalking are also subjected to physical violence,⁴⁰ but it does not report overlap rates for these crimes and coercive control. The estimate assumes that all of the women subjected to physical violence are also subjected to coercive control, and therefore subtracts from the coercive control population estimate the entire physical violence population estimate
 - b. The estimate calculates the overlap of coercive control and physical violence using the ratio between the CDC twelve-month prevalence rates of coercive control (10.7%) and physical violence (4.0%) among all women in the U.S. population. This ratio is 2.7: $10.7/4.0 = 2.7$.⁴¹ This

³⁸ *Intimate Partner Violence in the United States—2010*, supra note 4 at 32, Table 3.6.

³⁹ *Id.* at 19.

⁴⁰ Calculated from *Intimate Partner Violence in the United States—2010*, supra note 4 at 24, Table 2.8.

⁴¹ Physical violence and coercive control rates are from *Intimate Partner Violence in the United States—2010*, supra note 4 at 21, Figure 2.6 and 16, Figure 2.2, respectively. The CDC report does not provide a combined 12-month prevalence rate for rape, physical violence and stalking. The physical violence rate is an acceptable proxy for the combined

means that 270 women are victims of coercive control for every 100 who are victims of physical violence. Because the estimate assumes that all of the women subjected to physical violence are also subjected to coercive control, for every 100 women subjected to both physical violence and coercive control, another 170 are subjected to only coercive control. (270 victims of coercive control–100 victims of physical violence *and* coercive control = 170 victims of coercive control alone.) This means that the number of women subjected to coercive control alone is 1.7 times higher than the number of women subjected to physical violence *and* coercive control ($170/100 = 1.7$).

- c. Given that 9.7% of unauthorized farmworker women are estimated to be eligible because they have been subjected to sexual or physical violence, another 16.5% of these women are eligible because they have been subjected to coercive control alone: $9.7\% * 1.7 = 16.5\%$.
4. We estimate that the farmworker women with incomes less than the federal poverty line who are eligible for LSC-funded services under 45 C.F.R. § 1626.4 are distributed among the states in the same proportion as the population of unauthorized farmworker women as determined by ETA.

The methodology for estimating the population of unauthorized female farmworkers in poverty eligible for LSC-funded services based on the provisions of § 1626.4 is summarized in Table 1.

C. Estimation Methodology for Forced Labor and Trafficking Qualifying Crimes

The estimate of the population subject to forced labor and trafficking is derived from data in the San Diego County study discussed above. **We estimate that 16.3% of the unauthorized male farmworkers with annual incomes less than the federal poverty line are eligible for LSC-funded services under § 1626.4.**

rate because given that physical violence is involved in 92.4% of lifetime occurrences of rape or stalking.

1. The initial base for this estimate is the population of unauthorized male farmworkers who have annual household incomes less than the federal poverty line.
2. The San Diego County study found that 16.3% of unauthorized farmworkers were subjected to employer trafficking violations.
3. We propose using the 16.3% trafficking rate estimate identified in the San Diego County study because it used a Respondent Driven Sampling method that is particularly effective for deriving estimates in studies of hidden populations and for drawing inferences from the sample group to broader populations.⁴²
4. We estimate that the population of unauthorized male farmworkers who are §1626.4 eligible are distributed among the states in the same proportion as the population of unauthorized male farmworkers with incomes below the federal poverty line as determined by ETA.

The methodology for estimating the population of unauthorized male farmworkers in poverty eligible for LSC-funded services based on the provisions of §1626.4 is summarized in Table 2 below.

⁴² Matthew J. Salganik and Douglas D. Heckathorn, "Sampling and estimation in hidden populations using respondent-driven sampling," *Sociological Methodology* 34 (2004), at 193–240, https://www.princeton.edu/~mjs3/salganik_heckathorn04.pdf. See also, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, supra note 29 at 10; *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, supra note 22 at 6.

Table 1				
Estimation Calculations for Population of Unauthorized Female Farmworkers in Poverty Eligible for LSC-funded Services Based on Victimization of Sexual Violence / Physical Violence 1626.4 Qualifying Crimes				
Base Population: Unauthorized Female Farmworkers with Incomes Below Poverty Line				
	A	B	C	D
	Adjustment Factor	Adjustment Factor Value	Adjustment Factor Rationale / Source	Calculation
1	Combined rate for rape, physical violence and stalking	9.7% of base population	Based on CDC 12-month prevalence rate for rape, physical violence and stalking for women with annual incomes <\$25,000	.097 * base
2	Rate for coercive control	16.5% of base population	Based on ratio of CDC 12-month prevalence rates of coercive control to 12-month rate for physical violence Ratio is 2.7/1 = 1.7 instances of coercive control for every instance of physical violence.	.165 * base
3	Total: Estimate of population of unauthorized farmworker women in poverty eligible for LSC-funded services because they are subjected to or threatened by Section 1626.4 qualifying crimes related to sexual and physical violence			Cell D1 + Cell D2
4	Geographic distribution of population among states based on ETA/ NAWS data regarding the geographic distribution of unauthorized female farmworkers in poverty.			

Table 2				
Estimation Calculations for Population of Unauthorized Male Farmworkers In Poverty Eligible for LSC-funded Services Based on Victimization of Forced Labor / Labor Trafficking 1626.4 Qualifying Crimes				
Base Population: Unauthorized Male Farmworkers with Incomes Below Poverty Line				
	A	B	C	D
	Adjustment Factor	Adjustment Factor Value	Adjustment Factor Rationale / Source	Calculation
1	Estimate rate of forced labor / labor trafficking victimization of unauthorized male farmworkers in poverty migrant	16.3% of unauthorized migrant farmworkers in poverty migrant	16.3% estimate based on findings of San Diego County study	.163* Base Population
2	Total: Estimate of population of unauthorized farmworker men in poverty eligible for LSC-funded services because they are subjected to or threatened by Section 1626.4 qualifying crimes related to forced labor / labor trafficking			Cell D1
3	Geographic distribution of population among states based on ETA / NAWS data regarding the geographic distribution of unauthorized male farmworkers in poverty.			