Legal Services Corporation
America's Partner For Equal Justice

LSC Act and Other Laws Directly Affecting LSC

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The Legal Services Corporation Act
42 U.S.C. §2996 *et seq.* (2010)

42 U.S.C. §2996 et. seq. current through February 1, 2010 with the exception of references to the Government Accounting Office which should now refer to the Government Accountability Office as per Pub. L. 108-271, §8(b) (2004).

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SUBCHAPTER X—LEGAL SERVICES CORPORATION

§ 1001

§ 2996. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this chapter;

(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

(6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.

(Pub. L. 88–452, title X, § 1001, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378; amended Pub. L. 95–222, § 2, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Par. (3). Pub. L. 95–222 inserted provision relating to assistance in improving opportunities for low-income persons consistent with this chapter.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 17(b) of Pub. L. 95–222 provided that: ''The amendments made by provisions of this Act other than sections 11 and 15 [amending this section and sections 2996c, 2996e, 2996f, 2996g, 2996h, 2996i, and 2996j of this title] shall be effective on the date of enactment of this Act [Dec. 28, 1977].''

SHORT TITLE

This subchapter is known as the ''Legal Services Corporation Act'', see Short Title note set out under section 2701 of this title.

§ 1002

§ 2996a. Definitions

As used in this subchapter, the term—

(1) ''Board'' means the Board of Directors of the Legal Services Corporation;

(2) ''Corporation'' means the Legal Services Corporation established under this subchapter;

(3) ''eligible client'' means any person financially unable to afford legal assistance;

(4) ''Governor'' means the chief executive officer of a State;

(5) ''legal assistance'' means the provision of any legal services consistent with the purposes and provisions of this subchapter;

(6) ''recipient'' means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 2996e(a)(1) of this title;

(7) ''staff attorney'' means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this subchapter; and

(8) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 88–452, title X, § 1002, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 378.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1003

§ 2996b. Legal Services Corporation

(a) Establishment; purpose

There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

(b) Principal office; agent for service of process

The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

(c) Status of Corporation under tax laws

The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of title 26 and as an organization described in section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26. If such treatments are conferred in accordance with the provisions of title 26, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of title 26 relevant to the conduct of organizations exempt from taxation.

(Pub. L. 88–452, title X, § 1003, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 379; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

TRANSITION TO LEGAL SERVICES CORPORATION PROGRAM

Section 3(a)–(d)(1), (e) of Pub. L. 93–355 provided that: ''(a) Notwithstanding any other provision of law, effective ninety days after the date of the first meeting of the Board of Directors of the Legal Services Corpora-

tion established under the Legal Services Corporation Act (title X of the Economic Opportunity Act of 1964, as added by this Act) [this subchapter], the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to section 222(a)(3), 230, 232 [sections 2809(a)(3), 2823, and 2825 of this title], or any other provision of the Economic Opportunity Act of 1964 [this chapter].

''(b) Within ninety days after the first meeting of the Board, all assets, liabilities, obligations, property, and records as determined by the Director of the Office of Management and Budget, in consultation with the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority, to be employed directly or held or used primarily, in connection with any function of the Director of the Office of Economic Opportunity or the head of any successor authority in carrying out legal services activities under the Economic Opportunity Act of 1964 [this chapter], shall be transferred to the Corporation. Personnel transferred to the Corporation from the Office of Economic Opportunity or any successor authority shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in compensation for one year after such transfer, except for cause. The Director of the Office of Economic Opportunity or the head of any successor authority shall take whatever action is necessary and reasonable to seek suitable employment for personnel who do not transfer to the Corporation.

''(c) Collective-bargaining agreements in effect on the date of enactment of this Act [July 25, 1974], covering employees transferred to the Corporation shall continue to be recognized by the Corporation until the termination date of such agreements, or until mutually modified by the parties.

''(d)(1) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity [now the Director of the Office of Community Services] or the head of any successor authority shall take such action as may be necessary, in cooperation with the president of the Legal Services Corporation, including the provision (by grant or otherwise) of financial assistance to recipients and the Corporation and the furnishing of services and facilities to the Corporation—

''(A) to assist the Corporation in preparing to undertake, and in the initial undertaking of, its responsibilities under this title [this subchapter];

''(B) out of appropriations available to him, to make funds available to meet the organizational and administrative expenses of the Corporation;

''(C) within ninety days after the first meeting of the Board, to transfer to the Corporation all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Economic Opportunity Act of 1964 [this chapter] or successor authority; and

''(D) to arrange for the orderly continuation by such Corporation of financial assistance to legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964 [this chapter] or successor authority.

Whenever the Director of the Office of Economic Opportunity or the head of any successor authority determines that an obligation to provide financial assistance pursuant to any contract or grant for such legal services will extend beyond six months after the date of enactment of this Act [July 25, 1974], he shall include, in any such contract or grant, provisions to assure that the obligation to provide such financial assistance may be assumed by the Legal Services Corporation, subject to such modifications of the terms and conditions of such contract or grant as the Corporation determines to be necessary.

''(2) [Omitted. Provided for the repeal of section 2809(a)(3) of this title.]

''(e) There are authorized to be appropriated for the fiscal year ending June 30, 1975, such sums as may be necessary for carrying out this section.''

§ 2996c. Board of Directors

(a) Establishment; membership

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after December 28, 1977, but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

(b) Term of office

The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

(c) Board members not deemed officers or employees of United States

The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

(d) Chairman

The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

(e) Removal

A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

(f) State advisory councils

Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor, the Board is author-

ized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this subchapter and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(g) Open meetings; applicability of Government in the Sunshine provisions

All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this subchapter shall be open and shall be subject to the requirements and provisions of section 552b of title 5 (relating to open meetings).

(h) Quarterly meetings

The Board shall meet at least four times during each calendar year.

(Pub. L. 88–452, title X, § 1004, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 379; amended Pub. L. 95–222, §§ 3, 4, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–222, § 3, inserted provision relating to appointments made after Dec. 28, 1977.

Subsec. (g). Pub. L. 95–222, § 4, substituted provisions relating to applicability of section 552b of title 5, for provisions setting forth requirements respecting availability of minutes of public meetings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

COMPENSATION OF MEMBERS OF BOARD OF DIRECTORS

Pub. L. 97–377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided: ''That no member of the Board of Directors of the Legal Services Corporation shall be compensated for his services to the Corporation except for the payment of an attendance fee at meetings of the Board at a rate not to exceed the highest daily rate for grade fifteen (15) of the General Schedule and necessary travel expenses to attend Board meetings in accordance with the Standard Government Travel Regulations.''

§ 1005

§ 2996d. Officers and employees

(a) Appointment of president; outside compensation of officers prohibited; terms

The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board. All officers shall serve at the pleasure of the Board.

(b) Power of president to appoint and remove employees; nonpartisan appointments

(1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(c) Conflict of interest

No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

(d) Compensation

Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5.

(e) Officers and employees not deemed officers and employees of Federal Government; Corporation not deemed a department, agency, or instrumentality of Federal Government; review of annual budget

(1) Except as otherwise specifically provided in this subchapter, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

(2) Nothing in this subchapter shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress.

(f) Exceptions

Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of title 5: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection.

(g) Freedom of information

The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5 (relating to freedom of information).

(Pub. L. 88–452, title X, § 1005, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 380.)

REIMBURSEMENT OF OFFICERS OR EMPLOYEES

Pub. L. 97–377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1876, provided: ''That no officer or employee of the Legal Services Corporation or a recipient program shall be reimbursed for membership in a private club,

or be paid severance pay in excess of what would be paid a Federal employee for comparable service.''

§ 1006

§ 2996e. Powers, duties, and limitations

(a) Powers of nonprofit corporation; additional powers

To the extent consistent with the provisions of this subchapter, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(*o*) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

(i) individuals, partnerships, firms, corporations, and nonprofit organizations, and

(ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through non-governmental arrangements),

for the purpose of providing legal assistance to eligible clients under this subchapter, and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions of this subchapter;

(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this subchapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

(B) training and technical assistance, and

(C) to serve as a clearinghouse for information.

(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English

(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter, and to terminate, after a hearing in accordance with section 2996j of this title, financial support to a recipient which fails to comply.

(B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this subchapter or the rules, regulations, and guidelines promulgated pursuant to this subchapter, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 2996j of this title.

(3) The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this subchapter as ''professional responsibilities'') or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities.

(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this subchapter unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities under this subchapter, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 2996f(a)(6) of this title. The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 2996f(a)(5) of this title, which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 2996j of this title, for suspension of legal assistance supported under this subchapter, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 2996j of this title, the termination of such assistance or employment, as deemed appropriate for the violation in question.

(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation

shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter.

(c) Participation in litigation; lobbying activities

The Corporation shall not itself—

(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this subchapter or a regulation promulgated under this subchapter is an issue, and shall not participate on behalf of any client other than itself; or

(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

(d) Miscellaneous prohibitions

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

(e) Political activities of Corporation employees and staff attorneys

(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of title 5, except that no staff attorney may be a candidate in a partisan political election.

(f) Harassment; malicious abuse of legal process

If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

(Pub. L. 88–452, title X, § 1006, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 381; amended Pub. L. 95–222, §§ 5(a), (b), 6, 7(a), 8, Dec. 28, 1977, 91 Stat. 1619, 1620.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95–222, § 5(a), (b), substituted ", or" for "and not" and in par. (A) inserted exception for broad general legal or policy research.

Subsec. (b)(1). Pub. L. 95–222, § 6(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1). Pub. L. 95–222, § 6(b), inserted provisions setting forth situations when the Corporation may participate in litigation.

Subsec. (d)(6). Pub. L. 95–222, § 6(c), added par. (6).

Subsec. (e)(2). Pub. L. 95–222, § 7(a), inserted provisions relating to staff attorneys.

Subsec. (f). Pub. L. 95–222, § 8, substituted "the court shall" for "the court may".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 2996f. Grants and contracts

§ 1007

(a) Requisites

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall—

(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for indi-

viduals eligible for legal assistance under this subchapter;

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

(i) the liquid assets and income level of the client,

(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

(iii) the cost of living in the locality, and

(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain from (A) any compensated outside practice of law, and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation;

(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

(B) a governmental agency, legislative body, a committee, or a member thereof—

(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

(ii) is considering a measure directly affecting the activities under this subchapter of the recipient or the Corporation.

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation);

(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities);

(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this subchapter and give preference in filling such positions to qualified persons who reside in the community to be served;

(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this subchapter or predecessor authority under this chapter which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 2996j of this title;

(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities; and

(11) ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an attorney for the Corporation in such civil action.

(b) Limitations on uses

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities;

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 App. U.S.C. 451 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law; or

(11) to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(c) Recipient organizations

In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3)[1] of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

(d) Program evaluation

The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this subchapter to insure that the provisions of this subchapter and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter are carried out.

(e) Corporation president authorized to make grants and enter into contracts

The president of the Corporation is authorized to make grants and enter into contracts under this subchapter.

(f) Public notification

At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

(g) Staff-attorney program study

The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this chapter and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first

[1] See References in Text note below.

meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

(h) Study and report to Congress on special needs of eligible clients

The Corporation shall conduct a study on whether eligible clients who are—

(1) veterans,

(2) native Americans,

(3) migrants or seasonal farm workers,

(4) persons with limited English-speaking abilities, and

(5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services[2]

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

(Pub. L. 88–452, title X, § 1007, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 383; amended Pub. L. 95–222, §§ 7(b), 9(a), (b)(1), (c), 10–13, Dec. 28, 1977, 91 Stat. 1620–1623; Pub. L. 105–12, § 9(*o*), Apr. 30, 1997, 111 Stat. 28; Pub. L. 106–185, § 2(d), Apr. 25, 2000, 114 Stat. 211.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b)(10), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix and Tables.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (b)(11), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of this title and Tables.

Section 2809 of this title, referred to in subsec. (c), was repealed by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519.

AMENDMENTS

2000—Subsec. (a)(11). Pub. L. 106–185 added par. (11).

1997—Subsec. (b)(11). Pub. L. 105–12 added par. (11).

1977—Subsec. (a)(2)(B)(iv). Pub. L. 95–222, § 9(a), substituted provisions setting forth factors which may be included in determining financial ability, for provisions setting forth factors required to be included in determining financial ability.

Subsec. (a)(2)(C). Pub. L. 95–222, § 9(b)(1), expanded existing provisions by requiring the Corporation to establish procedures for determining and implementing priorities and criteria for such priorities, and inserted provisions relating to appropriate training and support services.

Subsec. (a)(5). Pub. L. 95–222, § 9(c), in introductory text inserted prohibition relating to influencing the passage or defeat of State proposals by initiative referendum, in subpar. (A) substituted provisions relating to representation by an employee of a recipient for any eligible client, for provisions relating to representation by an attorney as attorney for any eligible client, and in subpar. (B) designated existing provision as cl. (i), inserted exception for testifying, drafting, or reviewing measures, and added cl. (ii).

Subsec. (a)(6). Pub. L. 95–222, § 7(b), struck out provisions relating to prohibitions against political activities by staff attorneys of the types described under cls. (B) and (C) of this par. and section 1502(a) of title 5.

Subsec. (b). Pub. L. 95–222, § 10, redesignated and reorganized provisions of former par. (1) as pars. (1) to (3) and, as so redesignated, enumerated criteria for assistance under such pars., redesignated former pars. (2) and (3) as (4) and (5), respectively, struck out former par. (4) relating to assistance to any unemancipated person of less than eighteen years of age, redesignated former par. (5) as (6), redesignated former par. (6) as (7) and, as so redesignated, inserted provision relating to initiation and provision relating to acting as an organizer, and struck out provisions relating to organization, assistance or encouragement to organize, or to plan for the creation, formation or structuring of entities, and provision respecting guidelines for assistance to clients, redesignated former par. (7) as (9) and, as so redesignated, inserted exception for legal advice to clients, reenacted par. (8) without change, and redesignated former par. (9) as (10) and, as so redesignated, inserted exception for actions concerning classifications prior to July 1, 1973.

Subsec. (c). Pub. L. 95–222, § 11, substituted provisions requiring recipients to include at least one-third membership of eligible clients or eligible clients who may also be representatives of associations or organizations of eligible clients, for provisions requiring recipients to include at least one individual eligible to receive legal assistance.

Subsec. (f). Pub. L. 95–222, § 12, inserted provision requiring notice to principal local bar association, if any, of community.

Subsec. (h). Pub. L. 95–222, § 13, added subsec. (h).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–185 applicable to any forfeiture proceeding commenced on and after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106–185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, and also subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by sections 7(b), 9(a), (b)(1), (c), 10, 12, and 13 of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Section 17(a)(1) of Pub. L. 95–222 provided that: ''The amendment made by section 11 of this Act [amending this section] shall be effective six months after the first day of the first calendar month following the date of enactment of this Act [Dec. 28, 1977].''

IMPLEMENTATION OF SYSTEM FOR COMPETITIVE AWARD OF GRANTS AND CONTRACTS

Pub. L. 101–515, title VI, § 607 (part), Nov. 5, 1991, 104 Stat. 2153, provided: ''That after October 1, 1991, (but not before) the Board of Directors of the Legal Services Corporation shall develop and implement a system for the competitive award of all grants and contracts, including support centers, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence''.

[2] So in original. Probably should be followed by a comma.

Pub. L. 101–162, title VI, § 608 (part), Nov. 21, 1989, 103 Stat. 1036, provided: ''That none of the funds appropriated under this Act or under any prior Acts for the Legal Services Corporation shall be used to consider, develop, or implement any system for the competitive award of grants or contracts until such action is authorized pursuant to a majority vote of a Board of Directors of the Legal Services Corporation composed of eleven individuals nominated by the President after January 20, 1989, and subsequently confirmed by the United States Senate, except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, including support centers, and that nothing herein shall apply to any competitive awards program currently in existence; subsequent to confirmation such new Board of Directors shall develop and implement a proposed system for the competitive award of all grants and contracts''.

Pub. L. 100–459, title VI, § 605, Oct. 1, 1988, 102 Stat. 2227, provided: ''That a Board of Directors of the Legal Services Corporation, composed of individuals nominated by the President after January 20, 1989 and subsequently confirmed by the United States Senate, shall develop and implement a system for the competitive award of all grants and contracts, including support centers, to take effect after September 30, 1989.''

§ 1008

§ 2996g. Records and reports

(a) Authority to require reports

The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this subchapter regarding activities carried out pursuant to this subchapter.

(b) Authority to require recordkeeping; access to records

The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

(c) Annual report to President and Congress; contents

Suspended by section 3003 of the Federal Reports Elimination and Sunset Act, Pub. L. 104-66, 109 Stat 707 (1995).

(d) Copies and retention of reports

Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this subchapter shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Corporation may establish.

(e) Publication in Federal Register of rules, regulations, guidelines and instructions

The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

(Pub. L. 88–452, title X, § 1008, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 386; amended Pub. L. 95–222, § 9(b)(2), Dec. 28, 1977, 91 Stat. 1621.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–222 inserted provisions setting forth required contents of annual report.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (c) of this section relating to filing annual report with Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 2 on page 202 of House Document No. 103–7.

§ 2996h. Audits

§ 1009

(a) Annual audit; availability of records; filing and inspection of report

(1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(3) The report of the annual audit shall be filed with the Government Accountability Office and shall be available for public inspection during business hours at the principal office of the Corporation.

(b) Audit by Government Accountability Office

(1) In addition to the annual audit, the financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the Government Accountability Office shall

have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the Government Accountability Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 3523(c) of title 31.

(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

(c) Annual financial audit of recipient persons or bodies

(1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this subchapter to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

(2) Upon request, the Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds received from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

(d) Attorney-client privilege

Notwithstanding the provisions of this section or section 2996g of this title, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege.

(Pub. L. 88–452, title X, § 1009, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 387; amended Pub. L. 95–222, § 14, Dec. 28, 1977, 91 Stat. 1623; Pub. L. 104–66, title II, § 2111, Dec. 21, 1995, 109 Stat. 730; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

In subsec. (b)(2), ''section 3523(c) of title 31'' substituted for ''section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2004—Subsecs. (a)(3), (b)(1), (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

1995—Subsec. (c)(2). Pub. L. 104–66 substituted ''Upon request, the'' for ''The'' in first sentence.

1977—Subsec. (b)(2). Pub. L. 95–222 inserted provisions relating to duration of retention of books, etc., by Corporation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 2996i. Financing

§ 1010

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, $90,000,000 for fiscal year 1975, $100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation $205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

(b) Availability of funds

Funds appropriated pursuant to this section shall remain available until expended.

(c) Non-Federal funds

Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this subchapter, except that this provision shall not be construed to prevent recipients from receiving other public funds or tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this subchapter.

(d) Limitations on grant or contract authority

Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 2996e(a)(3) of this title in any such year.

(Pub. L. 88–452, title X, § 1010, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, §§ 5(c), 15, Dec. 28, 1977, 91 Stat. 1619, 1623.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–222, § 15, inserted provisions authorizing appropriations for fiscal year 1978 and two succeeding fiscal years, and substituted provisions requiring appropriations to be made for not more than two fiscal years and payments in annual installments

at beginning of each fiscal year in appropriated amounts, for provisions requiring appropriations to be for not more than two fiscal years, and, if for more than one year, in payments in annual installments at beginning of each fiscal year in appropriated amounts.

Subsec. (d). Pub. L. 95–222, § 5(c), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 5(c) of Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

Section 17(a)(2) of Pub. L. 95–222 provided that: ''The amendment made by section 15 of this Act [amending this section] shall be effective with respect to fiscal years beginning after September 30, 1977.''

§ 1011

§ 2996j. Special limitations

The Corporation shall prescribe procedures to insure that—

(1) financial assistance under this subchapter shall not be suspended unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

(Pub. L. 88–452, title X, § 1011, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388; amended Pub. L. 95–222, § 16, Dec. 28, 1977, 91 Stat. 1624.)

AMENDMENTS

1977—Par. (2). Pub. L. 95–222 inserted provisions relating to function and appointment of an independent hearing examiner, and the time for any hearings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–222 effective Dec. 28, 1977, see section 17(b) of Pub. L. 95–222, set out as a note under section 2996 of this title.

§ 1012

§ 2996k. Coordination

The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this subchapter, to the extent not inconsistent with other applicable law.

(Pub. L. 88–452, title X, § 1012, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388.)

EX. ORD. NO. 11874. DELEGATION OF FUNCTIONS TO DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 11874 eff. July 25, 1975, 40 F.R. 31737, provided:

By virtue of the authority vested in me by Section 1012 of the Economic Opportunity Act of 1964, as amended by the Legal Services Corporation Act of 1974 (88 Stat. 388, 42 U.S.C. 2996k), and Section 301 of Title 3 of the United States Code, and as President of the United States, the Director of the Office of Management and Budget is hereby designated and empowered to exercise the authority vested in the President by said Section 1012 of the Economic Opportunity Act of 1964, as amended [this section], to direct that appropriate support functions of the Federal Government may be made available to the Legal Services Corporation in carrying out its activities, to the extent not inconsistent with other applicable law. Such functions shall be provided under terms and conditions as may be agreed upon by the Legal Services Corporation and the Federal agencies involved.

GERALD R. FORD.

§ 1013

§ 2996*l*. Reservation of right to repeal, alter, or amend

The right to repeal, alter, or amend this subchapter at any time is expressly reserved.

(Pub. L. 88–452, title X, § 1013, as added Pub. L. 93–355, § 2, July 25, 1974, 88 Stat. 388.)

Assisted Suicide Funding Restriction Act
Public Law 105-12 (1997)

Public Law 105-12
H.R. 1003
April 30, 1997

Assisted Suicide Funding Restriction Act of 1997

[Excerpt amends the LSC Act to prohibit use of LSC funds for assisted suicide activities.]

***See* 45 CFR Part 1643 for implementing regulations.**

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SEC. 5. RESTRICTION ON USE OF FEDERAL FUNDS BY ADVOCACY PROGRAMS.

(a) In General.--Subject to section 3(b) (relating to construction and treatment of certain services), no funds appropriated by Congress may be used to assist in, to support, or to fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of—

(1) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;
(2) compelling any person, institution, governmental entity to provide or fund any item, benefit, program, or service for such purpose; or
(3) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

(b) List of Programs to Which Restrictions Apply.—

(1) In general.--Subsection (a) applies to funds appropriated under or to carry out the following:

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(E) Legal assistance.--Legal assistance programs under the Legal Services Corporation Act.

****

SEC. 9. CONFORMING AMENDMENTS.

(o) Legal Services Program.--Section 1007(b) of the Legal Services Corporation Act (42 U.S.C. 2996f(b)) is amended--
(1) by striking "or" at the end of paragraph (9);
(2) by striking the period at the end of paragraph (10) and inserting "; or"; and
(3) by adding after paragraph (10) the following:
"(11) to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997."

The Civil Asset Forfeiture Reform Act of 2000, Pub. L. 106–185, amended the LSC Act to add § 1007(a)(11) at 42 U.S.C. § 2996f(a)(11) and amended the Federal Civil Forfeiture statute below.

Title 18, United States Code
Chapter 46, Forfeiture
Section 983—General rules for civil forfeiture proceedings
See 18 U.S.C. §981 et. seq. for the full provisions of this law.

§983

****

(b) Representation. -

(1)

(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as -

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2)

(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

(B)

(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

(ii) The court shall enter a judgment in favor of the Legal Services Corporation for reasonable attorney fees and costs submitted pursuant to clause (i) and treat such judgment as payable under section 2465 of title 28, United States Code, regardless of the outcome of the case.

(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

****

The LSC provisions of the *Victims of Trafficking Protection Act* appear at Pub. L. 106–386, §107(b) and (e) (2000) as amended by Pub. L. 108–193, §4 (2003). They are codified in Title 22 of the U.S. Code with reference to definitions appearing in Title 8, reprinted below.

***See* LSC Program Letter 05-2 for implementation guidance.**

TITLE 22. FOREIGN RELATIONS AND INTERCOURSE
CHAPTER 78. TRAFFICKING VICTIMS PROTECTION

See 22 U.S.C. §7101 et. seq. for the full provisions of this law.

§ 7105. Protection and assistance for victims of trafficking

(b) Victims in the United States.

(1) Assistance.

(A) Eligibility for benefits and services. Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons, or an alien classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 1157 of title 8.

(B) Requirement to expand benefits and services. Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a nonimmigrant under section 1101(a)(15)(T)(ii) of title 8, without regard to the immigration status of such victims. In the case of nonentitlement programs funded by the Secretary of Health and Human Services, such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking.

(C) Definition of victim of a severe form of trafficking in persons. For the purposes of this paragraph, the term "victim of a severe form of trafficking in persons" means only a person—

(i) who has been subjected to an act or practice described in section 7102(8) of this title as in effect on the date of the enactment of this Act [enacted Oct. 28, 2000]; and

(ii) **(I)** who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) Repealed. Pub. L. 108–193, § 6(a)(2), Dec. 19, 2003, 117 Stat. 2880

(E) Certification.

(i) In general. Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II)—

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and

(II) (aa) has made a bona fide application for a visa under section 1101(a)(15)(T) of title 8 as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) Period of effectiveness. A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) Investigation and prosecution defined. For the purpose of a certification under this subparagraph, the term "investigation and prosecution" includes—

(I) identification of a person or persons who have committed severe forms of trafficking in persons;

(II) location and apprehension of such persons; and

(III) testimony at proceedings against such persons.

(iv) Assistance to investigations. In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved.

(2) Grants.

(A) In general. Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.

(B) Allocation of grant funds. Of amounts made available for grants under this paragraph, there shall be set aside—

(i) three percent for research, evaluation, and statistics;

(ii) two percent for training and technical assistance; and

(iii) one percent for management and administration.

(C) Limitation on Federal share. The Federal share of a grant made under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted.

TITLE 8. ALIENS AND NATIONALITY
CHAPTER 12. IMMIGRATION AND NATIONALITY
GENERAL PROVISIONS
January 27, 2006

§ 1101 (a) As used in this chapter—

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(T) and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security and the Attorney General jointly[;] determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22,

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,

(III) (aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; or

(bb) has not attained 18 years of age, and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) if the Secretary of Homeland Security, in his or her discretion and with the consultation of the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance described in clause (i)(III)(aa), the request is unreasonable.

LSC

Legal Services Corporation
America's Partner For Equal Justice

PROGRAM LETTER 05-2
(Superseding Program Letter 02-5)

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El Paso, TX

Ernestine P. Watlington
Tremont, PA

TO: All LSC Program Directors

FROM: Helaine M. Barnett, President HMB

DATE: October 6, 2005

RE: Eligibility of Immigrant Victims of Severe Forms of Trafficking and Family Members for Legal Services

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Introduction

This Program Letter defines those situations where, by virtue of the Trafficking Victims Protection Act of 2000 (TVPA) (P.L. No. 106-386) as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Legal Services Corporation (LSC) grantees are authorized to use either LSC or non-LSC funds to represent individuals that the grantees would otherwise be unable to represent due to the alien eligibility provisions of 45 CFR 1626. This Program Letter supercedes Program Letter 02-5, incorporates the 2003 amendments to include provision of legal services to certain family members of victims of trafficking, and clarifies the permissibility and limits of providing legal services to victims and family members.

The Trafficking Victims Protection Reauthorization Act of 2003 amended the TVPA by expanding its coverage to include certain family members of victims. The trafficking of women, children and men into the United States for sex crimes, sweatshop labor, involuntary domestic servitude, and migrant agricultural labor is estimated to affect between 14,500 and 17,500 individual victims annually. Congress enacted the TVPA in October 2000 to address this problem. Section 107(b)(1)(B) allows victims of trafficking to be determined to be eligible for legal assistance from LSC grantees without regard to their immigration status. The 2003 Reauthorization expands permissible representation by LSC grantees to include certain family members of victims of trafficking.

Under the statutory provisions of the TVPA, as amended, LSC grantees may represent victims of trafficking and their family members without regard to their immigration status as set forth in this Program Letter. Such representation and legal services may include assistance in obtaining certification and/or a visa as well as providing assistance with other legal issues. The scope of permissible representation is summarized below and explained in greater detail in the question-answer format that follows.

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Summary of Permissible Representation by LSC Grantees

- Adult Victims of Trafficking
  - May provide representation in the certification process
  - May provide representation with legal issues unrelated to trafficking
  - Must discontinue representation if the victim is denied certification and is not otherwise eligible for assistance

- Victims of Trafficking who are under the age of 18
  - No certification available or necessary for victims under 18
  - May provide representation without HHS letter of eligibility
  - May provide representation to obtain an eligibility letter
  - May provide representation with legal issues unrelated to trafficking

- Family Members of Victims of Trafficking
  - May provide representation to a spouse and/or children of an adult victim (age 21 or older)
  - May provide representation to spouse, children, unmarried siblings under the age of 18 and parents of a child victim (under the age of 21)
  - May provide representation with an application for a derivative T nonimmigrant visa
  - May provide representation with legal issues unrelated to trafficking
  - Must discontinue representation if the family member is denied a T visa and is not otherwise eligible for assistance

Who are victims of trafficking?

The TVPA covers victims who are trafficked by force or fraud into the commercial sex industry as well as those individuals who are exploited for their labor. Specifically, victims of trafficking are defined in the TVPA as persons who have been subject to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained the age of 18; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

May LSC grantees represent victims of trafficking?

Yes. LSC grantees may represent victims of trafficking with any legal issue in which the grantee would otherwise provide legal services or representation. To be eligible for representation and legal services from an LSC grantee, a victim of trafficking must be under 18 years of age or be a "subject of a certification" under the TVPA.

How does an adult victim of trafficking become a "subject of a certification" under the Act?

Only adult victims need to receive certification letters from the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement in order to access certain federally funded benefits and services. The adult victim may initiate the certification process by applying to the Department of Homeland Security (DHS) for a T nonimmigrant visa. In the alternative, a federal law enforcement agency may initiate the certification process by seeking a grant of "continued presence" status from DHS for the victim of trafficking. Continued presence is a temporary immigration status that DHS may grant to a victim of trafficking during the course of a criminal investigation or prosecution of the trafficker(s). The T nonimmigrant visa is a special visa for victims of trafficking and their family members.

Once DHS grants continued presence status or issues a letter stating that the victim has made a bona fide application for a T visa, HHS issues the adult victim of trafficking a certification letter.

How should LSC grantees verify that an adult victim of trafficking has been certified?

An adult victim of trafficking seeking representation and legal services should submit a copy of his or her certification letter as documentation of eligibility for legal services, receipt of which should be noted in the case file. In the absence of the certification letter, the LSC grantee (e.g., intake worker) should verify the victim of trafficking's certification status by calling the HHS trafficking verification line at (202) 401-5510 or (866) 401-5510 to confirm that HHS has issued a certification letter and note the telephone call and the response in the case file.

May LSC grantees provide representation and legal services to adult victims of trafficking in the certification process?

Yes. LSC grantees may assist an adult victim with the certification process. LSC grantees may represent and provide legal services to an adult victim in applying to DHS for a T visa or by advocating on behalf of the victim that a federal law enforcement agency apply to DHS for continued presence status. LSC grantees should document in the case file the grantee's determination that the client meets the definition of an adult victim and is eligible for and is seeking assistance with certification.

May LSC grantees provide representation and legal services to victims of trafficking who are under 18 years of age?

Yes. LSC grantees may assist children under the age of 18 who meet the definition of a child victim under the TVPA without any form of certification.

Victims of trafficking under 18 years of age do not need to be certified, although HHS issues eligibility letters to child victims of trafficking so they may access certain government welfare benefits. LSC grantees also may provide representation and legal services to a victim under age 18 in an effort to obtain such an eligibility letter and with legal issues unrelated to their status as a victim of trafficking.

How should LSC grantees document that a victim under the age of 18 meets the definition of a child victim?

LSC grantees should document in the case file the grantee's determination that the child meets the definition of a child victim of trafficking; or, if the child has obtained an eligibility letter, the grantee should include a copy of the child's eligibility letter issued by HHS or make a notation that the letter has been reviewed.

May LSC grantees provide representation to family members of victims of trafficking?

Yes. LSC grantees may assist certain family members of victims of trafficking. For victims of trafficking who are under the age of 21, the victim's spouse, children, unmarried siblings under the age of 18, and parents are considered family members. For victims who are 21 years of age or older, only the victim's spouse and children are considered family members.

How should LSC grantees verify the visa status of non-citizen family members of victims of trafficking?

The family member seeking assistance should submit documentation that immigration authorities have issued him or her a derivative T nonimmigrant visa under the Immigration and Nationality Act, § 101(a)(15)(T)(ii). Acceptable documents include: I-94 coded T-2, T-3, T-4, or T-5; Form I-797 Notice of Action indicating approval of T-2, T-3, T-4, or T-5 status; employment authorization document coded (c)(25); or any other document indicating the grant of T nonimmigrant status. LSC grantees should place a copy of the documentation in the case file or make a notation that the documentation has been reviewed.

May LSC grantees provide representation and legal services to family members of victims of trafficking with the process of applying for a derivative T nonimmigrant visa?

Yes. LSC grantees may assist family members with the process of applying for a derivative T nonimmigrant visa.

If a victim of trafficking or a family member has applied for or sought representation and legal services with the process of applying for certification or a derivative T nonimmigrant visa, may the LSC grantee also provide representation and legal services with other legal issues?

Yes. If an LSC grantee is representing an adult victim of trafficking in obtaining certification or a family member in obtaining a visa, or if the victim or family member has otherwise applied for certification or a visa, the LSC grantee may represent that person in connection with other legal issues, without having to wait for certification or issuance of the derivative T nonimmigrant visa. For example, a grantee may begin to represent a victim or a victim's family member in a case seeking an order of protection, a housing matter, or a wage claim at the same time the grantee begins to provide representation and legal services to the victim of trafficking or family member in the certification or visa process.

May an LSC grantee representing a victim of trafficking in the certification process or a family member in the application process for a derivative T nonimmigrant visa continue representation if certification or the visa is denied?

No. If the client is ultimately denied certification or denied a derivative visa and is not otherwise eligible for legal services under the provisions of 45 CFR Part 1626, the grantee must discontinue representation, consistent with local rules of professional responsibility.

LSC Provision of the *Violence Against Women and Department of Justice Reauthorization Act of 2005*

Public Law 109-162
HR 3402
January 5, 2006

Violence Against Women and Department of Justice Reauthorization Act of 2005

[Excerpt amends the FY 1998 LSC appropriation rider regarding LSC recipients providing services to immigrant victims of domestic violence, sexual assault and trafficking.]

***See* LSC Program Letter 06-2, attached, for implementation guidance.**

****

SEC. 104. ENSURING CRIME VICTIM ACCESS TO LEGAL SERVICES.

(a) In General- Section 502 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119; 111 Stat. 2510) is amended--

(1) in subsection (a)(2)(C)--

(A) in the matter preceding clause (i), by striking `using funds derived from a source other than the Corporation to provide' and inserting `providing';

(B) in clause (i), by striking `in the United States' and all that follows and inserting `or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or'; and

(C) in clause (ii), by striking `has been battered' and all that follows and inserting `, without the active participation of the alien, has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).'; and

(2) in subsection (b)(2), by striking `described in such subsection' and inserting `, sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii))'.

(b) Savings Provision- Nothing in this Act, or the amendments made by this Act, shall be construed to restrict the legal assistance provided to victims of trafficking and certain family members authorized under section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)).

****

LSC Provision of the *Violence Against Women and Department of Justice Reauthorization Act of 2005*

[The amended text now reads as follows:

SEC. 502 (a)(2)(C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from providing related legal assistance to--

> *(i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or*
>
> *(ii) an alien whose child , without the active participation of the alien, has been battered or subject to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).*

SEC. 502(b) DEFINITIONS- For purposes of subsection (a)(2)(C):

> *(1) The term `battered or subjected to extreme cruelty' has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1953).*
>
> *(2) The term `related legal assistance' means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty , sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)).]*

LSC

Legal Services Corporation
America's Partner For Equal Justice

Program Letter 06-2

TO: All LSC Program Directors

FROM: Helaine M. Barnett, President HMB

DATE: February 21, 2006

SUBJECT: Violence Against Women Act 2006 Amendments

Introduction

This Program Letter is intended to provide basic guidance on the significant changes impacting both client eligibility for services as well as use of LSC funds to support those services pursuant to the reauthorization of the Violence Against Women Act of 2006 ("VAWA 2006") as part of the Department of Justice reauthorization bill.[1] VAWA 2006, which was signed into law by President George W. Bush on January 5, 2006, explicitly expands the scope of services that LSC grantees can provide to victims of domestic violence, sexual assault, trafficking and certain other crimes, regardless of their immigration status. (Public Law 103-322). The VAWA 2006 Amendments became effective upon enactment, thus, LSC grantees may provide services beginning January 5, 2006 to previously ineligible applicants for services notwithstanding LSC's alien eligibility regulations at 45 CFR Part 1626.

The VAWA 2006 Amendments now provide that subsection (a) (11) of section 504 of the LSC FY 1996 appropriations act (which restricts representation of aliens and has been carried forward in each subsequent appropriations act):

> Shall not be construed to prohibit a recipient from providing related legal assistance to –
>
> (i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or
>
> (ii) an alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).
>
> Pub. L. 103-322, Section 104.

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[1] "Violence Against Women and Department of Justice Reauthorization Act of 2005", P.L. 103-322

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Specific note is made of the VAWA 2006 Savings Provision, which provides, "Nothing in this Act, or the amendments made by this Act, shall be construed to restrict the legal assistance provided to victims of trafficking and certain family members authorized under section 107(b)((1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 237105(b) (1)."

Summary of Permissible Representation by LSC Grantees

Based upon the current authority under the Kennedy Amendment,[2] the VAWA 2006 Amendments expand the exception to the general prohibition on accepting and representing undocumented applicants for services in three ways.

- First, recipients are now permitted to use both LSC and non-LSC funds to provide to an otherwise 1626-ineligible alien legal services that are "directly related" to the prevention of, or obtaining relief from, the battery or cruelty, sexual assault or trafficking, or the crimes such as those listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act [8 USC 1101(a)(15)(U)(iii)] or whose child has been similarly victimized. Previously, such legal assistance by grantees was permitted only if supported wholly with non-LSC funds.

- Second, recipients are now permitted to provide "related legal assistance" to otherwise ineligible aliens who are victims of domestic abuse even if they are not married to (or the child of) their abusers. Previously, such assistance was permitted only if the domestic abuse was perpetrated by the spouse (or parent) of the victim.

- Third, recipients may now also provide related legal assistance, supported with LSC funds, to new categories of otherwise ineligible aliens in addition to those who have been battered or subject to extreme cruelty.

This expanded scope of LSC recipients' permissible representation authorized by VAWA 2006 is further summarized below and explained in greater detail through the Question-and-Answer format that follows.

May grantees now use LSC funds to provide legal assistance authorized by the VAWA 2006 Amendments?

Yes. As of January 5, 2006, LSC grantees are now permitted to use LSC funds, as well as non-LSC funds, to provide legal assistance to any victim covered by VAWA 2006

[2] Under the 1997 Kennedy Amendment, the statutory restriction on providing legal assistance to aliens not otherwise deemed eligible under Part 1626 was amended to permit grantees to provide legal assistance to otherwise 1626-ineligible aliens who are victims of domestic violence perpetrated by a spouse (or parent), provided that such assistance is funded wholly with non-LSC funds. The Kennedy Amendment is reflected in Part 1626, at section 1626.4.

and those previously covered by the Kennedy Amendment. Previously, such assistance was permitted only if supported wholly with non-LSC funds.[3] Any Kennedy Amendment clients receiving services or whose cases were opened on or after January 5, 2006 may receive these LSC-funded services.

May an LSC grantee represent individuals who are eligible for LSC services under the VAWA 2006 Amendments notwithstanding 45 CFR 1626?

Yes. LSC grantees may begin representing persons eligible under this new authority beginning January 5, 2006, notwithstanding 45 CFR Part 1626. The new statutory provisions preempt the regulatory provisions.

Who is covered by the VAWA 2006 Amendments?

In addition to covering aliens who have been battered or subjected to extreme cruelty, the VAWA 2006 Amendments expand coverage to permit LSC grantees to serve victims of sexual assault or trafficking[4] or aliens who qualify for a "U" visa under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA). A "U" visa provides for lawful temporary status for an alien who the Attorney General determines has suffered substantial abuse as a victim of certain criminal activity, possesses information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity and such criminal activity violated U.S. law or took place in the U.S.[5] Certain family members of a "U" visa applicant may also apply for "U" visa relief.

The VAWA 2006 Amendments also cover any alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, sexual assault or

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[3] Please note that no specific accounting changes need to be made by LSC recipients. The rules, instructions and guidance set forth in the *LSC Audit Guide for Recipients and Auditors* and the *Accounting Guide* remain in full force and effect.

[4] By the express terms of the VAWA 2006 Amendments, the authority of LSC recipients to provide unrelated legal assistance to victims of trafficking (and certain family members) under the Trafficking Victims Protection Act, as amended, is not restricted by the VAWA 2006 Amendments. Thus, the guidance provided by LSC Program Letter 05-2 remains in full force and effect, and LSC grantees can provide trafficking victims with any legal assistance as long as it is not otherwise restricted and is within the recipients' priorities (or is an "emergency" under Part 1620.4).

[5] The types of criminal activities covered by 101 (a)(15)(U)(iii) include crimes such as rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes or any similar activity in violation of Federal, State, or local criminal law. Eligibility for "U" visa protection requires having been a victim of a *criminal activity*. Victims are eligible for "U" visa immigration relief without requiring that the criminal case be ultimately prosecuted or that a conviction for the crime be obtained.

trafficking in the United States, or meets the qualifications of section 101(a)(15)(U) of the INA, without regard to the immigration status of the parent.

What is the scope of legal assistance that LSC grantees may provide?

Grantees may provide "related legal assistance" to persons covered by the VAWA 2006 Amendments. "Related legal assistance" is defined in the statute as "legal assistance directly related to the prevention of, or obtaining relief from the cruelty, sexual assault or trafficking, or the crimes listed in" section 101(a)(15)(U) of the INA. The original Kennedy Amendment contained a parallel definition that referred only to assistance related to domestic violence and extreme cruelty. LSC interprets the term "related legal assistance" to mean that grantees may provide legal assistance to help the affected alien or child to escape from the domestic violence, sexual assault, trafficking, or covered criminal activity, to ameliorate their effects or to protect against future domestic violence, sexual assault, trafficking, or criminal activity.

As was true under the Kennedy Amendment, the VAWA 2006 Amendments do not authorize a grantee to provide an ineligible alien who has suffered domestic abuse, sexual assault, battering, trafficking or criminal activity and who would otherwise be ineligible with any and all legal assistance that would fall within the grantee's priorities. Grantees will have to make determinations regarding whether a particular service is directly related to preventing or obtaining relief from the domestic violence, sexual assault, trafficking, or criminal activity on a case-by-case basis.[6]

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[6] This is consistent with prior guidance offered by LSC in the Preamble to the current Part 1626 of the LSC regulations regarding cruelty and domestic abuse:

> Although the question of whether a particular service is directly related to the abuse will need to be made on a case-by-case basis, the following provides some guidance. First, the definition would permit a recipient to use non-LSC funds to provide assistance on a broad range of family law issues, but would not permit assistance on matters that are not directly related to the abusive relationship. For example, a recipient could provide legal assistance to seek a civil protection order against the abuser and to terminate the marriage and the parental rights of the abuser, but could not provide adoption assistance if the client remarries and the new spouse, who is also an ineligible alien, wishes to adopt the children. Similarly, the definition would permit the recipient to use non-LSC funds to provide assistance to secure housing, medical or income assistance for the abused spouse and children, so that they would no longer have to be dependent on the abuser. However, absent some evidence that subsequent events were the direct result of the abuse, it would not permit them to challenge an eviction action by a landlord for non-payment of rent, sue the agency administering the medical assistance program for failure to pay for specific care, or to challenge a cutoff of public assistance for failure to meet work requirements. Finally the definition would permit the recipient to [...] assist the abused spouse or child to seek suspension of deportation, or to self-petition for immigrant status, a procedure which avoids the necessity of relying on the citizen/legal permament resident abusive spouse or parent's willingness to file or pursue the petition on their behalf. Both of these procedures are included in the Violence Against Women Act and the interim INS regulations which implement that act.

Preamble to Part 1626, 62 Fed. Reg. 19410 – 11 (April 21, 1997).

May LSC grantees assist an alien in filing for a "U" visa?

Yes. LSC grantees may assist an alien in the filing of the petition for a "U" visa.[7]

May a grantee assisting a client who is eligible on the basis of the client's qualification for a "U" visa, continue representing that person if the Attorney General determines that the client does not meet the requirements of the law or the "U" visa is denied?

No. If there is a final administrative denial after the Attorney General determines that the client does not meet the requirements of the law and/or the client's petition for a "U" visa is finally denied, unless the client is otherwise eligible for legal assistance, the grantee would have to discontinue representation of the client, consistent with the requirements of the local rules of professional responsibility.[8]

How should LSC grantees document the eligibility of a client provided services pursuant to the VAWA Amendments?

Pursuant to 45 CFR §1626.12, recipients are required to maintain "records sufficient to document the recipients compliance" with Part 1626. Under the current rule, for victims of domestic violence, grantees are excused from maintaining records regarding the immigration status on such persons, although they are still required to keep such records as demonstrate that the person was a victim of domestic violence. Since the new VAWA authority is essentially an expansion of the prior domestic violence victim authority, the same recordkeeping rules apply with respect to additional persons authorized to be served under the new law. Thus, for a client who is eligible for legal assistance because he or she is a victim of domestic abuse, sexual assault, trafficking or qualifies for a "U" visa, the grantee should keep such records as demonstrate that the person meets the statutory criteria (and is a victim of domestic abuse, sexual assault, trafficking or qualifies for a "U" visa) but would not otherwise have to record the immigration status of such clients.[9]

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[7] As of the date of this Program Letter, the U.S. Citizenship and Immigration Services of the Department of Homeland Security (the successor to the old Immigration and Naturalization Service) has not issued regulations setting forth the specific process and requirement for obtaining a "U" visa. However, in the absence of regulations, interim relief is available to crime victims through an early "U" visa application process. Nonetheless, VAWA 2006 requires: "Not later than 180 days after the enactment of this Act, the Attorney General, the Secretary of Homeland Security, and the Secretary of State shall promulgate regulations to implement the provisions contained in [...] this Act, and the amendments made by this Act," at Sec. 828.

[8] This follows the provision set forth in 45 C.F.R. § 1626.9.

[9] To the extent that a client's eligibility is based on "U" visa eligibility, the grantee will have to have such records as demonstrate that the client has a reasonable claim for a "U" visa. In determining whether a person is a victim of domestic violence, sexual abuse, trafficking or a "U" visa crime, i.e., therefore, eligible for LSC representation, LSC grantees may assist the individual to obtain available proof, e.g., court records and police reports or, in appropriate cases, assist the individual in reporting the crime to law enforcement.

Are these cases CSR reportable?

Yes. Because LSC funds may be used to provide service to LSC financially eligible persons under the VAWA 2006 Amendments, any cases accepted by grantees for financially eligible persons under this authority should be counted in the grantees' Case Service Reports ("CSR"). Such cases closed in 2006 should be reported in the program's CSR when they submit their 2006 CSR report in March, 2007, irrespective of whether LSC funds were actually expended to support the services provided in the case.