



August 3, 2007

Dear Colleagues,

I am pleased to share with you another important component of the Legal Services Corporation (LSC) Quality Initiative. Attached is the revised 2008 LSC Case Service Report Handbook (CSR Handbook). The revised CSR Handbook will be effective as of January 1, 2008.

For almost one year, LSC has been engaged in a revision of the CSR Handbook. We have worked in conjunction with an Advisory Committee with staff from LSC-funded programs. This group, along with an LSC staff committee, ably chaired by Kamala Vasagam, Program Counsel, Office of Compliance and Enforcement, shared their knowledge and experience in using the CSR system and conducted an extensive review and revision of the CSR Handbook. We solicited and received comments from a larger group of reviewers on a preliminary draft of the revised 2008 CSR Handbook. LSC sincerely appreciates the valuable input that both the Advisory Committee and the draft reviewers gave to LSC. That input was fully considered as we made our decisions about the final language of the CSR Handbook.

In revising the CSR Handbook, LSC's objectives were to:

- clarify the standards for reporting a CSR case;
- clarify the requirements for documentation required to support each case;
- update and clarify the Case Closure Categories and Legal Problem Categories under which CSR cases are reported; and
- provide clarity on the issues relating to CSR reporting that have arisen since the last revision of the CSR Handbook.

### ***Transitional Considerations***

Any case closed in 2007 is governed by the current CSR Handbook. Any case closed in 2008 will be governed by the 2008 CSR Handbook. However, the following should be noted:

#### *Intake Documentation Requirements of the 2008 CSR Handbook (Chapter V)*

All cases opened January 1, 2008 and thereafter must follow the documentation requirements of the 2008 CSR Handbook. However, if a case was opened prior to January 1, 2008 and complied with the documentation requirements of the prior Handbook, it may still be closed and reported for an additional 12 months after January 1, 2008. In other words, the 2008 CSR may include cases opened under the old documentation requirements. As of January 1, 2009, all cases reported must comply fully with the 2008 CSR Handbook, regardless of when they were opened.

#### *Case Closure – Problem Codes*

For cases opened prior to January 1, 2008 and still open as of that date, programs may have to adjust the legal problem codes before case closure. There have been numerous changes to

the legal problem codes and an appropriate code under the 2008 CSR Handbook should be selected for all cases closed after January 1, 2008.

*Case Closure – Limitations*

It should be noted that there are cases that have been reportable under the current CSR Handbook which are not under the 2008 CSR Handbook. These cases may continue to be reported in 2007 but not in 2008.

*Frequently Asked Questions (FAQ)*

Effective January 1, 2008, all existing FAQ's related to earlier versions of the CSR Handbook are no longer applicable. LSC will issue new FAQ's as needed after the 2008 CSR Handbook becomes effective.

These revisions to the CSR Handbook likely will require some changes to the case management system used by your program. LSC has been working with several of the major case management system vendors and they are aware of the changes that are required. We urge you to contact your vendor directly and confirm that the changes will be available to your program prior to January 1, 2008, the effective date of the revised CSR Handbook. LSC expects all programs to implement the revised CSR Handbook requirements as of that effective date.

LSC is undertaking a national training schedule from now through December 2007, to acquaint LSC-funded program staff with the new CSR Handbook. Attached to this memorandum is the current schedule for those trainings and instructions on how to participate in any of the training events. We will be continually updating the schedule which can be found at [www.lsc.gov](http://www.lsc.gov) (CSR training). All programs are encouraged to take advantage of one of these in-person training events. Staff who would benefit from the new CSR Handbook training include: staff attorneys; paralegals; other advocates; compliance responsible persons; supervisors and managing attorneys. Other staff such as intake workers may also benefit from the training, depending on the methods used by the program in conducting intake.

Limited opportunities for the scheduling of other training events exist. Please contact David de la Tour at [delatoud@lsc.gov](mailto:delatoud@lsc.gov) or 202-295-1525 to discuss other possible training dates. If you have questions about the CSR Handbook, please contact Kamala Vasagam at [vasagamk@lsc.gov](mailto:vasagamk@lsc.gov) or 202-295-1535.

We hope that you will find the 2008 CSR Handbook to be improved guidance for CSR reporting.

Sincerely,



Helaine M. Barnett  
President



# Legal Services Corporation

## Case Service Report Handbook

*2008 Edition*

## **ACKNOWLEDGEMENTS**

The Legal Services Corporation sincerely thanks the following individuals who generously gave their time and talents to help draft the revised 2008 Case Service Report Handbook (CSR Handbook). The valuable counsel provided by the Advisory Committee and by the draft reviewers was fully considered as LSC made its decisions regarding the final language of the CSR Handbook.

The Advisory Committee's knowledge, experiences, and devotion of countless hours to frequent conference calls and to the review and edit of numerous drafts, substantially enhanced the clarity of the revised CSR Handbook.

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The careful review provided by the draft reviewers and their commitment to high-quality legal services was evident in the thoughtful comments they shared with LSC.

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Helaine M. Barnett  
President, Legal Services Corporation  
July 2007

# LEGAL SERVICES CORPORATION

## CSR Handbook

2008 Edition

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### Table of Contents

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<b>Chapter I: Purpose, Scope, and Effective Date.....</b>	<b>1</b>
1.1 Purpose.....	1
1.2 Scope.....	1
1.3 Effective Date .....	1
<b>Chapter II: Key Definitions .....</b>	<b>2</b>
2.1 Definition of Case.....	2
2.2 Definition of Legal Assistance.....	3
2.3 Definition of Legal Information.....	3
2.4 Definition of Client.....	4
2.5 Who Can Provide Legal Assistance.....	4
<b>Chapter III: Case Management Systems.....</b>	<b>5</b>
3.1 Use of Automated Case Management Systems .....	5
3.2 Single Recording of Cases .....	5
3.3 Timely Closing of Cases.....	6
3.4 Management Review of Case Service Reports.....	7
3.5 Identification and De-Selection of Non-CSR Cases.....	7
3.6 Limitation of Defaults in Case Management Systems.....	8

<b>Chapter IV: Reporting Requirements .....</b>	<b>9</b>
4.1 General Requirement .....	9
4.2 Private Attorney Involvement Cases .....	9
4.3 Reporting LSC-Eligible Cases Irrespective of Funding Source .....	9
4.4 Inclusion of Certain Subrecipient Cases .....	9
4.5 Reporting for Separate Service Areas.....	10
<b>Chapter V: Documentation Requirements.....</b>	<b>11</b>
5.1 General Requirement .....	11
5.2 Requirements Pertaining to Client Eligibility.....	11
5.3 Income Documentation Requirements.....	11
5.4 Asset Documentation Requirements.....	12
5.5 Citizenship and Alien Eligibility Documentation Requirements.....	13
5.6 Legal Assistance Documentation Requirements .....	14
<b>Chapter VI: Types of Case Services.....</b>	<b>15</b>
6.1 Case Service Definitions.....	15
6.2 Cases Involving Multiple Levels of Assistance.....	15
6.3 Cases Involving Repeated Instances of Assistance .....	15
6.4 Cases Involving Related Legal Problems .....	15
6.5 Cases Involving Appeals.....	16
6.6 Alternative Forms of Service .....	17
<b>Chapter VII: Referrals.....</b>	<b>19</b>
7.1 Referrals of Ineligible Applicants.....	19
7.2 Referrals of Eligible Applicants.....	19
7.3 Referrals to PAI Attorneys, Subrecipients, or Program Offices.....	19

<b>Chapter VIII: Case Definitions and Closure Categories.....</b>	<b>20</b>
8.1 Purpose of Case Closure Categories .....	20
8.2 Limited Service Case Categories .....	20
CSR Category A – Counsel and Advice .....	20
CSR Category B – Limited Action .....	21
8.3 Extended Service Case Categories.....	21
CSR Category F – Negotiated Settlement Without Litigation.....	21
CSR Category G – Negotiated Settlement With Litigation .....	21
CSR Category H – Administrative Agency Decision.....	22
CSR Category I – Court Decision.....	22
CSR Category K – Other .....	23
CSR Category L – Extensive Service .....	23
<b>Chapter IX: Legal Problem Code Categories and Codes .....</b>	<b>24</b>
<b>Chapter X: Private Attorney Involvement Cases .....</b>	<b>29</b>
10.1 Definition of a Private Attorney Involvement Case .....	29
10.2 Single Recording of PAI Cases.....	30
10.3 Timely Closing of PAI Cases .....	30
10.4 Case Oversight and Follow-Up.....	30
10.5 PAI Case Documentation.....	31
<b>Appendix.....</b>	<b>32</b>
A. Program Letter 06-2 Violence Against Women Act 2006 Amendments .....	33
B. Program Letter 05-2 Eligibility of Immigrant Victims of Severe Forms of Trafficking and Family Members for Legal Services .....	38



# LEGAL SERVICES CORPORATION

## CSR Handbook

### 2008 Edition

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## Chapter I: Purpose, Scope, and Effective Date

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### 1.1 Purpose

The purpose of the Case Service Report (CSR) Handbook is to provide instruction on how to count and document cases reported to the Legal Services Corporation (LSC). The Handbook guides the gathering of quantifiable information on cases and its goal is to ensure that LSC-funded programs provide consistent data that can be accurately combined to reflect the level of civil legal services provided across the nation. Case statistics are an important indicator LSC considers in evaluating a program's work. However, case statistics, taken alone, are not determinative of the effectiveness of the legal services a program provides.<sup>1</sup> The accuracy of case information submitted to LSC is vital to obtaining continued Federal funding for legal services. LSC relies on statistical and other pertinent information in its annual request for Federal funding for legal services.

### 1.2 Scope

This Handbook applies to the recording and reporting of cases as defined by § 2.1 of this Handbook and 45 CFR § 1635.2(a), and sets forth requirements for using automated case management systems to account for both open and closed cases. This Handbook does not apply to matters as defined by 45 CFR § 1635.2(b).

### 1.3 Effective Date

This Handbook is effective January 1, 2008. All prior editions of the CSR Handbook are superseded. In addition, all Frequently Asked Questions and Answers provided prior to June 30, 2007 are no longer applicable as of January 1, 2008.

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<sup>1</sup> See LSC's Performance Criteria.

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## Chapter II: Key Definitions

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### 2.1 Definition of Case

For CSR purposes, a **case** is defined as the provision of permissible legal assistance to an eligible client with a legal problem, or set of closely related legal problems, accepted for assistance in accordance with the requirements of the LSC Act, regulations, and other applicable law.<sup>2</sup> Cases that meet LSC eligibility criteria should be reported in the CSR irrespective of funding source.<sup>3</sup>

Legal services programs may record and report the provision of legal assistance as a **case** only if:

- (a) the client is financially and otherwise *eligible* to receive legal assistance under the LSC Act, regulations, and other applicable law;
- (b) the client's case is within *program priorities* (or is an emergency case accepted under the program's emergency case acceptance procedures);
- (c) the legal services program has actually *accepted* the client for service through its intake system or another established procedure for ensuring client eligibility;<sup>4</sup>

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<sup>2</sup> "Legal assistance" in this Handbook is synonymous with "legal services" in 45 CFR Part 1635. See 45 CFR § 1635.2(a) which defines "case" in reference to timekeeping requirements. Chapters VI and VII of this Handbook contain further guidance on when to treat service to a client as a case. Chapter IV of this Handbook contains additional guidance regarding LSC reporting requirements.

<sup>3</sup> If an applicant is financially ineligible under LSC criteria, but not under non-LSC criteria, service to that client may be provided with non-LSC funds, but the case may not be reported to LSC for CSR purposes; however, if the client is ineligible under the "entity restrictions" because of the client's status (e.g., an ineligible alien) or the nature of the legal services (e.g., a class action), then assistance may not be provided with any funds belonging to a recipient program. Such "entity restrictions" are based on Section 504 of the 1996 LSC appropriations act (110 Stat 321 (1996, carried forward in succeeding LSC appropriations acts), providing that services to certain classes of clients and certain activities may not be carried out by any entity that receives LSC funds, irrespective of the source of the funds actually used to support such services and/or activities. See 45 CFR Part 1610.

Under the Violence Against Women Act 2006 Amendments (VAWA 2006), the Kennedy Amendment exception for service to otherwise ineligible aliens who are domestic violence victims has been expanded to broaden the allowable categories of clients and cases and to allow the use of LSC funds for such cases. Consequently, such cases on behalf of otherwise ineligible aliens are now considered LSC-eligible and may be reported in a CSR without the documentation required by 45 CFR Part 1626. Also, under the Trafficking Victims Protection Act (TVPA), as amended in 2003, otherwise ineligible alien victims of trafficking have similar expanded eligibility and cases undertaken on their behalf may also be reported in a CSR with documentation of alien eligibility as specified by LSC program letters. See Program Letters 06-2 and 05-2 in the Appendix for details of this expanded eligibility. For U.S. citizens, appropriate documentation pursuant to 45 CFR Part 1626 is required.

<sup>4</sup> The point at which a case is "accepted" for service depends on the type of service provided and the process by which the program provides the service. For example, when an eligible applicant seeks advice over the telephone, "acceptance" occurs when a staff member or participating private attorney determines that the applicant qualifies for service and indicates acceptance of the case through assignment of a case number or other means of demonstrating case acceptance (e.g., a notation in the file).

- (d) the *legal assistance provided* to the client meets the criteria of one of the CSR Closure Categories described in Chapter VIII of this Handbook;<sup>5</sup>
- (e) the type of *legal assistance* provided to the client is not prohibited by the LSC Act, regulations, or other applicable law (e.g., a class action);<sup>6</sup> and
- (f) the *legal problem(s)* of the client are not of a type prohibited by the LSC Act, regulations, or other applicable law (e.g., an abortion case).<sup>7</sup>

## 2.2 Definition of Legal Assistance

For CSR purposes, legal assistance is defined as the provision of limited service or extended service on behalf of a client or clients that meets the criteria of the CSR Closing Categories contained in Chapter VIII.<sup>8</sup> Legal assistance is specific to the client's unique circumstances and involves a legal analysis that is tailored to the client's factual situation. Legal assistance involves applying legal judgment in interpreting the particular facts and in applying relevant law to the facts presented.<sup>9</sup> The provision of legal assistance creates an attorney-client relationship.

## 2.3 Definition of Legal Information

For CSR purposes, legal information is defined as the provision of substantive information not tailored to address a person's specific legal problem. As such, it is general and does not involve applying legal judgment and does not recommend a specific course of action. For example, providing only a pamphlet or brochure is legal information and not legal assistance. The provision of legal information does not create an attorney-client relationship.<sup>10</sup>

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<sup>5</sup> The legal assistance must actually be provided to the client in order for the assistance to be reported as a case in a CSR. For example, if the program performs legal research but does not advise the client of the results of the research, this would not constitute a CSR-reportable case. Similarly, if the program sends a letter to a client containing legal advice which is then returned to the program as undeliverable (and the program has not orally advised the client), this also would not constitute a CSR-reportable case.

<sup>6</sup> See Footnote 3.

<sup>7</sup> See 45 CFR § 1610.2 for a list of prohibited legal problems and assistance which cannot be undertaken by a program receiving LSC funds nor reported as CSR cases. Note that CSR cases may be reported irrespective of compliance with the requirements of 45 CFR § 1611.9, Retainer Agreements, or 45 CFR Part 1636, Client Identity and Statement of Facts.

<sup>8</sup> See Footnote 3.

<sup>9</sup> Assistance that is not legal in nature, e.g. provision of a social service, referral for financial assistance or other assistance, is not legal assistance.

<sup>10</sup> For CSR purposes, LSC has adopted the definition of legal information in the ABA Standards for the Provision of Civil Legal Aid (2006). See Standard 3.6 on the Provision of Legal Information.

Legal information alone is not legal assistance and the provision of legal information may not be reported as a CSR case.<sup>11</sup>

## 2.4 Definition of Client

For CSR purposes, a client is defined as a person (or group under 45 CFR § 1611.6) who is:

- (a) *financially and otherwise eligible* to receive legal assistance under the LSC Act, regulations, and other applicable law, regardless of source of funding used by the program; and
- (b) *accepted* for legal assistance through an intake system or other established program procedure for ensuring client eligibility.

For CSR purposes, to be eligible for and accepted for legal assistance and to be reported as a CSR case, a **client** must meet the financial (including both income and assets), citizenship (including alien status), and other eligibility requirements of the LSC Act, regulations, and other applicable law.<sup>12</sup>

## 2.5 Who Can Provide Legal Assistance

Legal assistance in a case must be provided by an attorney authorized to practice law in the jurisdiction where assistance is rendered or a non-attorney under the direct supervision of a licensed attorney in accordance with the rules of practice in the jurisdiction(s) where the program provides assistance (unless the jurisdiction or forum allows waiver of attorney supervision or allows legal assistance by a non-attorney under specific circumstances). A person providing assistance in a case need not have the job title of “attorney” or “paralegal”, but any such individual must be authorized to provide legal assistance in accordance with applicable rules of practice and must keep time records as required by 45 CFR Part 1635.

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<sup>11</sup> The provision of legal information may only be reported as a matter for Matters Service Report (MSR) purposes. A program may not provide or report the same level of assistance as a case for an eligible client and as a matter for an ineligible client.

<sup>12</sup> See Footnote 3. Examples of LSC eligibility requirements can be found at 45 CFR Part 1611, Eligibility, 45 CFR Part 1620, Priorities in Use of Resources, 45 CFR Part 1626, Restrictions on Legal Assistance to Aliens, and 45 CFR Part 1637, Representation of Prisoners.

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## Chapter III: Case Management Systems

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### 3.1 Use of Automated Case Management Systems

Programs shall utilize automated case management systems (CMS) and procedures that ensure that information necessary for the effective management of cases is accurately and timely recorded in a case management system. Such systems and procedures shall ensure that program management has:

- (a) timely access to accurate information on cases; and
- (b) the capacity to meet funding sources' reporting requirements.

To meet reporting requirements, programs' case management systems and procedures shall include the ability to report cases by funding source, grant type (e.g., Basic Field, Migrant, Native American), Private Attorney Involvement (PAI) component, jurisdiction (e.g., county or city), and individual office.

Case management systems should also employ sufficient technological capacity to ensure cost effective and efficient management of data and workflow. Hallmarks of sufficient technological capacity include:

- single entry of data;
- automated reporting that eliminates onerous and time consuming manual calculation or tabulation;
- the ability to readily review data and information from multiple perspectives; and
- the promotion of data integrity and assistance in the identification of erroneous data.

Furthermore, programs should keep their case management system technology sufficiently up-to-date to enable them to benefit from future technological advances.

### 3.2 Single Recording of Cases

Through the use of automated case management systems and procedures, programs shall ensure that cases involving the same client and same legal problem are not recorded and reported to LSC more than once as required by §§ 6.1 through 6.5 of this Handbook. Such systems and procedures shall include a process for checking for duplication among both open and closed cases. The checking process may occur either:

- (a) at the point when cases are first entered into the case management system; or
- (b) at a later point in time (before the cases are reported to LSC) when case information can be systematically reviewed.

One method for systematically reviewing case information involves the generation of case management reports which list instances where two or more open and/or closed cases involve the same client and legal problem. A review of such multiple cases identified in the reports may indicate that duplicate records are present in the case management system. After identifying instances of duplicate recording of cases, if any, programs shall take necessary steps to eliminate duplicate cases prior to the reporting of case service information to LSC.

### **3.3 Timely Closing of Cases**

Programs shall ensure the timely closing of cases so that case service reports submitted to LSC contain current and accurate information about both open and closed cases for the grant year (January 1 through December 31). After the close of the grant year, LSC provides two months additional time to allow programs to take reasonable and necessary steps to ensure that cases in which legal assistance has ceased, and is not likely to resume, are closed prior to the submission of case service reports to LSC. *See* § 10.3 of this Handbook for specific timely case closing requirements for PAI cases.

Programs shall report cases as having been closed in the year in which assistance ceased, depending on case type:

- (a) cases closed as CSR Limited Service Closure Categories A and B shall be reported as having been closed in the grant year in which the case was opened, unless:
  - (i) the case is opened after September 30, in which circumstance it may be reported either in the year opened or the following year; or
  - (ii) there is any entry in the file or in the case management system stating a reason why the case should be held open into the following year, in which circumstance the case shall be closed in the grant year in which assistance on behalf of the client was completed.
- (b) cases closed as CSR Extended Service Closure Categories F through L shall be reported as having been closed in the grant year in which assistance on behalf of the client was completed. In the absence of an entry in the case management system or file noting case closure or stating a reason why the case should be held open into the following year, work shall be deemed completed one grant year after the last assistance on behalf of the client is noted in the file. For example, if

the last assistance on behalf of the client was noted in the file in June 2006, the case must be closed and reported no later than grant year 2007.<sup>13</sup>

Programs shall employ one or more method(s) of ensuring timely closing of cases. Two possibilities are discussed below, but other alternative methods may be used. One method is the generation of case management reports which indicate the length of time cases have been open. A review of such reports would tend to indicate whether cases are being timely closed. Another method is to run a report of open cases that have had no time keeping entries recorded for the past 90 days. This method provides a potential indication that a case might have been completed but not closed.

### **3.4 Management Review of Case Service Reports**

Programs shall institute procedures for ensuring management review of case service information for accuracy and completeness prior to its submission to LSC. At a minimum, such procedures shall include either a review of management reports such as those described in §§ 3.2 and 3.3 of this Handbook, or another method of review that ensures that cases are timely closed and are not reported more than once in the same year.

In addition, the executive director, or a designee, shall review the program's case service reports prior to their submission to LSC in order to ensure that the information contained in the reports fairly represents the volume and types of CSR cases that the program provided during the grant year. When necessary to determine the accuracy of case service information, programs shall have the capacity to generate a detailed listing of open and closed cases to support case service information reported to LSC.

### **3.5 Identification and De-selection of Non-CSR Cases**

Programs shall establish a method in their case management systems that will de-select case files for CSR reporting that were opened as LSC-eligible but are not reportable to LSC as cases. Examples of such case files include: (1) case files properly opened where the client withdrew before any legal assistance could be rendered, (2) case files where the client gave the program erroneous information at intake and the correction of which showed that the client was ineligible,<sup>14</sup> (3) case files where administrative or computer error caused a case to be opened when no case should have been opened, (4) duplicate case files, (5) case files where closure is untimely as discussed in § 3.3 of this Handbook, or (6) case files where the required documentation (e.g., a citizenship attestation) is not present.

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<sup>13</sup> This does not apply to a case that is still pending before a court or administrative agency.

<sup>14</sup> If there was a change in the client's circumstances after acceptance, the case may be counted as a CSR case, but if the client was ineligible at the time of intake, the case may not be counted.

While LSC does not mandate the use of a specific method to identify and de-select non-CSR cases, the method adopted must have the ability to be easily used by case handlers and other program staff to close case files that should not be reported to LSC with some type of “exit” code or field that enables staff to de-select that case from inclusion in a CSR report. Any system that accomplishes the goal of easily de-selecting any files opened as LSC reportable that are not eligible to be closed as CSR “cases” from CSR reports is sufficient.<sup>15</sup> For example, one method is to close such case files with a closing code such as X (or any other letter near the end of the alphabet) that would be used to designate the case file as a non-CSR case.

### **3.6 Limitation of Defaults in Case Management Systems**

Defaults in important data fields tend to reduce the accuracy of the data submitted because there is no way to tell whether staff actually made an inquiry and decision as to what should go in the field or just skipped over it, allowing the default value to be recorded. Accordingly, certain fields that are critical to eligibility may not have a default. These fields are: income, assets, number in the household, citizenship/eligible alien status, and LSC-eligibility. LSC also recommends that other fields important to the accuracy of the CSR information not have defaults.

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<sup>15</sup> If a program uses a “rejected” code, it shall be used only for applicants who do not qualify for program services or who are otherwise not accepted for services by the program. Cases for eligible clients that have been accepted for services cannot subsequently be coded as “rejected.” Programs should have the ability to distinguish between cases that were initially rejected and cases that were initially accepted but could not be reported as closed cases in the CSR.



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## Chapter IV: Reporting Requirements

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### 4.1 General Requirement

For each grant year, recipients shall report case service information to LSC as part of the annual Grant Activity Report to be submitted in the first quarter of the following year. Case information reported to LSC shall include both numbers of closed cases and numbers of open cases. Detailed instructions on submitting case information to LSC are available through the Recipient Information Network at [www.rin.lsc.gov](http://www.rin.lsc.gov).

### 4.2 Private Attorney Involvement Cases

For each grant year, recipients of Basic Field grants shall report case information for their PAI components separately from their staff Basic Field cases.<sup>16</sup> This requirement does not apply to Migrant and Native American grants; any cases closed by private attorneys using Migrant or Native American funds shall be reported as Migrant or Native American and not as PAI cases.<sup>17</sup> For further guidance regarding the reporting of PAI cases, *see* Chapter X of this Handbook.

### 4.3 Reporting LSC-Eligible Cases Irrespective of Funding Source

Recipients should report all cases in which there has been an eligibility determination showing that the client meets LSC eligibility requirements, regardless of the source(s) of funding supporting the cases, provided such cases are completed by the recipient or by PAI attorneys. Cases without such eligibility determinations may not be reported to LSC.<sup>18</sup> This Chapter does not require that programs document client financial eligibility for any cases that are wholly funded by non-LSC funding sources, unless such cases are reported to LSC.

### 4.4 Inclusion of Certain Subrecipient Cases

Recipients shall report only cases closed by subrecipients as defined by 45 CFR §1627.2 that are supported in whole or in part with LSC funds. Organizations receiving transfers of only non-LSC funds from a recipient are not subrecipients under 45 CFR Part 1627 and none of their cases may be reported to LSC. However, recipients using non-LSC funds to meet the LSC PAI requirement

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<sup>16</sup> For purposes of this Handbook, grants to programs for legal assistance are referred to as Basic Field, Migrant, and Native American. However, all funds provided by Congress for legal assistance are appropriated under the “Basic Field” line item.

<sup>17</sup> Nevertheless, Migrant or Native American funds expended to pay or support private attorneys may still be counted towards a program’s 12.5% PAI expenditure requirement.

<sup>18</sup> *See* Footnote 3.

through arrangements with another organization may report the non-LSC funded PAI cases closed by that organization if such cases meet the definitions and requirements of this Handbook.

#### **4.5 Reporting for Separate Service Areas**

Recipients receiving funding for more than one LSC service area shall report case service information separately for each separate service area for which LSC funding is received.<sup>19</sup>

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<sup>19</sup> A program may have more than one service area in a specific category of funding, such as Basic Field, or may have service areas in more than one category of funding, such as Basic Field and Migrant. In either case, each service area is to be reported separately.

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## Chapter V: Documentation Requirements

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### 5.1 General Requirement

For each case reported to LSC, programs shall record case and client information necessary for effective case management, either through electronic entries in an automated case management system database, through notations on an intake sheet or other hard-copy document in a case file, or through other appropriate means. For each case reported to LSC, such information shall describe (at a minimum) the information required in §§ 5.2, 5.3, 5.4, 5.5, and 5.6 of this Handbook and:

- (a) the client's name;
- (b) the client's legal problem(s);
- (c) the level(s) of legal assistance provided; and
- (d) the source(s) of funding which support the case.

### 5.2 Requirements Pertaining to Client Eligibility

In addition, for each case reported to LSC, programs shall document that a determination of client eligibility was made in accordance with LSC requirements including §§ 5.3 (income documentation), 5.4 (asset documentation) and 5.5 (citizenship and alien eligibility documentation).<sup>20</sup> The documentation of eligibility shall be recorded electronically in a case management system record, or in a simple form as provided by 45 CFR § 1611.7(b) and shall be preserved for audit purposes for a period of five years.<sup>21</sup>

### 5.3 Income Documentation Requirements

At a minimum, for each case reported to LSC, programs shall record the number of members in the applicant's household and the total income<sup>22</sup> received by all members of the applicant's

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<sup>20</sup> For group clients, programs must obtain financial eligibility information as required per 45 CFR § 1611.6.

<sup>21</sup> Electronic recordation may include scanned copies of any paper documents related to eligibility, including citizenship attestations, retainer agreements, etc. If a program chooses to electronically record such information, however, client signatures must be visible on the electronic copy. In addition, programs must ensure all electronically recorded compliance information is backed up in the event of a failure of the program's computerized records system.

<sup>22</sup> See 45 CFR § 1611.2(i) which states: " 'Income' means actual current total cash receipts before taxes of all persons who are resident members of and contribute to the support of applicant's household, as that term is defined by the recipient."

household.<sup>23</sup> Program's intake procedures must include instructions to ask sufficient questions of the applicant to determine the total amount of household income and the program must be able to provide reasonable evidence that staff practice follows these procedures. A total amount of the applicant's household income must be recorded even if it is zero.<sup>24</sup>

For cases in which a program chooses to apply financial exceptions to applicants with household gross income exceeding 125% of the federal poverty guidelines in effect at the time of case acceptance, the documentation of eligibility shall also indicate the specific facts and factors relied on to make such a determination as required by 45 CFR § 1611.5. Additionally, the program's automated case management system must save the applicant's gross income as a separate and identifiable field in order to preserve a record that the applicant initially exceeded the basic income level but was served pursuant to over-income exceptions allowed under 45 CFR § 1611.5. It is critical that calculations involving exceptions to income ceilings are not applied in a manner that changes the gross income recorded in the file.<sup>25</sup>

If an applicant's total household income is derived solely from a government program for low-income individuals or families, then the program may determine that the applicant is financially eligible based on those benefits pursuant to 45 CFR §§ 1611.4(c) (provided the program's Board has adopted policies permitting such a determination regarding that specific government program). The program must record household size, household income, and the specific identity of the government program. In support of such determination, the program must have on file a resolution, minutes or other written evidence of action by its Board stating that eligibility for that specific government program qualifies a client as financially eligible. No further documentation of income or assets is required.

#### **5.4 Asset Documentation Requirements**

At a minimum, for each case reported to LSC, programs shall document the total value of assets held by all members of the applicant's household (except for categories of assets such as

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<sup>23</sup> Pursuant to 45 CFR § 1611.3(e), when an applicant is a victim of domestic violence, the recipient shall consider only the income and assets of the applicant and members of the applicant's household other than those of the alleged perpetrator of the domestic violence and shall not include any assets held by the alleged perpetrator of the domestic violence or jointly held by the applicant or by any member of the applicant's household with the alleged perpetrator of the domestic violence.

<sup>24</sup> The requirement that an amount be recorded is not satisfied if a computer program defaults to zero; program staff must make an actual entry to record an amount of household income in each case.

<sup>25</sup> Whatever method is used to determine income eligibility, a program must still record the client's gross income and maintain it as a separate field from the adjusted gross income. A mathematical deduction of over-income exceptions (or "spend-down) is not required under 45 CFR § 1611.5. If a program chooses to use a mathematical deduction (or "spend-down") to determine whether an applicant is eligible, it must still indicate in its records the factual basis for the decision to accept the client's case, even if the deductions bring the applicant's income below 125% of the federal poverty guidelines.

principal residence, work tools, or a vehicle needed for transportation excluded from consideration pursuant to recipient Board guidelines adopted under 45 CFR § 1611.3(d).<sup>26</sup>

Programs' intake procedures must include sufficient questions of the applicant to determine the total amount of non-excluded household assets and the program must be able to provide reasonable evidence that staff practice follows these procedures. Programs shall use the equity value of a non-excluded asset as opposed to its fair-market value in calculating asset eligibility.<sup>27</sup> A total value of the applicant's non-excluded household assets must be recorded, even if it is below the program's guidelines or zero.<sup>28</sup> For cases in which the applicant's household has non-excluded assets which exceed the program's asset ceiling (adopted pursuant to 45 CFR § 1611.3(d)(1)) but the program determines that the asset ceiling should be waived, the documentation of eligibility shall also indicate the factual basis for the decision to waive the assets ceiling as required by 45 CFR § 1611.3(d)(2).

If an applicant's total household income is derived solely from a government program for low-income individuals or families, then the program may determine that the applicant is financially eligible based on participation in that program as described in § 5.3 above, in which case no further asset documentation is required.

## **5.5 Citizenship and Alien Eligibility Documentation Requirements**

Pursuant to 45 CFR §§ 1626.6(a) and 1626.7(a), the level of documentation necessary to evidence citizenship or alien eligibility depends on the nature of the service provided to the client.<sup>29</sup> For cases involving Counsel and Advice or Limited Action (CSR Closure Categories A and B) provided exclusively over the telephone, the documentation of eligibility shall include a written notation or computer entry which reflects the client's oral response to the program's inquiry as to whether the client is a U.S. citizen or an eligible alien.<sup>30</sup>

For cases in which program staff has in-person contact with the client or the program provides continuous representation beyond Counsel and Advice or Limited Action (CSR Closure Categories A and B), the documentation of eligibility shall include either: (a) a written attestation of citizenship, or (b) documentation of alien eligibility, as required by 45 CFR §§ 1626.6(a) and

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<sup>26</sup> See Footnote 23 referring to the consideration of assets of domestic violence victims for eligibility purposes.

<sup>27</sup> For example, a client's asset could have a fair-market value of \$30,000 but if it is encumbered by a loan in the amount of \$28,000, the client's equity value in the asset would be only \$2,000.

<sup>28</sup> The requirement that a value be recorded is not satisfied if a computer program defaults to zero; program staff must make an actual entry to record an amount of household assets in each case. In the event a program chooses to include the value of a non-excluded asset in the asset field of its CMS or intake sheet, it should label it as such in order to prevent its inclusion in the calculation of an applicant's asset eligibility.

<sup>29</sup> There are exceptions to this; see Program Letters 05-2 and 06-2 in the Appendix for further detail regarding VAWA and Trafficking cases.

<sup>30</sup> The requirement for a written notation is not satisfied if a computer program defaults to an indication of eligibility; program staff must make an actual entry to record eligibility in each case.



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## Chapter VI: Types of Case Services

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### 6.1 Case Service Definitions

Chapter VIII of this Handbook defines categories of case services for reporting to LSC. When closing individual cases, programs shall report each case once according to the level of case service that best reflects, in the program's judgment and in accordance with the definitions and guidance contained in this Handbook, the level of assistance which the program provided during the course of the case.

### 6.2 Cases Involving Multiple Levels of Assistance

The program shall report only the highest level of service provided when a program provides more than one type of assistance to an eligible client during the same calendar year when attempting to resolve essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem. For example, if a program initially provides Advice and Counsel in an attempt to resolve a client's legal problem, and the program later negotiates a settlement with an opposing party with respect to the same legal problem, the program shall report the case only once as a Negotiated Settlement.<sup>31</sup>

### 6.3 Cases Involving Repeated Instances of Assistance

The program shall report repeated instances of assistance to the client as a single case when a program provides assistance more than once within the same calendar year to an eligible client who has returned to the program with essentially the same legal problem, as demonstrated by the factual circumstances giving rise to the problem. For example, if a program assists a client on two or more occasions with an on-going problem, the factual circumstances of which remain essentially the same over time, the program shall report its assistance to the client as a single case, even if the program has provided Counsel and Advice or Limited Action to the client on more than one occasion within the same calendar year.

### 6.4 Cases Involving Related Legal Problems

For cases involving related legal problems:

- (a) **For Counsel and Advice (CSR Closure Category A) cases only**, the presumption is that legal assistance rendered to a client on related legal issues

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<sup>31</sup> This requirement applies during the course of the calendar year. If a program has already closed and reported a case in one calendar year, and the client returns for additional service in a subsequent calendar year, the program may report the additional service as a separate case in the subsequent year, provided that the case otherwise meets the requirements and definitions of this Handbook.

contemporaneously or within a brief time frame is counted as one case. However, this presumption is rebutted and two or more cases may be reported if the legal issues are sufficiently different, as evidenced by the presence of:

- (i) legal issues that fall into different Legal Problem Categories,<sup>32</sup> such as Family and Housing;<sup>33</sup>
  - (ii) legal issues that fall into different Legal Problem Codes within either the Individual Rights or Miscellaneous Legal Problem Categories;<sup>34</sup>
  - (iii) legal issues that involve different potentially adverse parties, even if they are in the same Legal Problem Category or Code; or
  - (iv) legal issues that relate to substantially different underlying facts.
- (b) **For all other cases (CSR Closure Categories B to L)**, programs shall report related legal problems of an eligible client as a single case when the program representing the client attempts to resolve the related legal problems simultaneously through a single legal process. For court cases, if the legal problems are resolved under one Civil Action Number, only one case is reported. If there are multiple Civil Action Numbers, then multiple cases are counted. For example, if a client seeks assistance with related child custody and support problems, and the program assists the client by preparing a pleading or other document that addresses both problems, then the program shall report its assistance to the client as a single case. However, if child custody and child support are addressed in different actions or in different courts, then more than one case should be reported for the client.

## 6.5 Cases Involving Appeals

If a program represents a client in a case at the trial court and/or administrative agency level and then represents the client as an appellant or appellee in an appeal of that case to an appellate court as defined per 45 CFR §§ 1605.2 and 1605.3, the program should report the trial court or administrative agency decision below as one case.<sup>35</sup> A separate case should be opened for the

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<sup>32</sup> See Chapter IX for a listing of Legal Problem Categories and Codes.

<sup>33</sup> Different Legal Problem Codes within one Legal Problem Category, such as Divorce and Custody are not sufficient, except as stated in subsection (ii) above.

<sup>34</sup> Legal Problem Codes in these Legal Problem Categories may represent very different subject matter, (e.g. in the Miscellaneous Category, Indian/Tribal Law - 92 and Wills/Estates - 95).

<sup>35</sup> Note that only appeals **to an appellate court** fall within the definition of appeals in this Chapter and within the parallel definition of appeals in Chapter VIII, CSR Closure Category I(c). “Appeals” from an administrative agency



appeal.<sup>36</sup> If a program represents a client in a case remanded back to the lower court or administrative agency, the appeal should be closed under CSR Closure Category I(c) in Chapter VIII and another case opened for the proceedings in the lower court or administrative agency after remand.

## 6.6 Alternative Forms of Service

Programs may provide alternative forms of service such as alternative dispute resolution, *pro se* clinics, workshops, legal education, kiosks, and web assistance.<sup>37</sup>

- (a) However, such alternative service may not be reported as a case unless:
  - (i) the service provided qualifies as a case, as defined by § 2.1 of this Handbook;<sup>38</sup>
  - (ii) the service provided qualifies as legal assistance as defined by § 2.2;
  - (iii) the person receiving the service is a client as defined by § 2.4; and
  - (iv) the person providing the service is an attorney or a non-attorney under the direct supervision of a licensed attorney in accordance with the rules of practice in the jurisdiction(s) where the program provides assistance (unless the jurisdiction or forum allows waiver of attorney supervision or allows legal assistance by a non-attorney under specific circumstances) as stated in § 2.5.
- (b) Related services provided to the same client with respect to essentially the same legal problem are reported to LSC only as specified by §§ 6.2 and 6.3 of this Handbook.

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to a trial court or from a lower level trial court to a higher level trial court are not included in 45 CFR § 1605 and should be reported as only one case under CSR Closure Category I(b).

<sup>36</sup> Prior to opening a new case as an appeal or remand under § 6.5, a new client eligibility determination is required as well as an assessment of merit.

<sup>37</sup> Although 45 CFR § 1635.2(b) defines the operation of a *pro se* clinic as a “matter”, the provision of legal assistance to an attendee at a *pro se* clinic qualifies as a case when the service provided meets the definition of a case in § 2.1 of this Handbook and the person receiving the legal assistance meets the definition of a client in § 2.3 of this Handbook.

<sup>38</sup> A program may not provide legal assistance contrary to the LSC Act, regulations and other applicable law, as discussed in Footnote 3, as part of a workshop, clinic, or other alternate form of service.

- (c) Programs may report alternative forms of service provided in § 6.6 under the CSR category that best fits the actual service provided, as specified by Chapter VIII of this Handbook. If the program provides legal information as opposed to legal assistance, the service provided is a matter and not a case.<sup>39</sup>

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<sup>39</sup> *See also* ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.6 on the Provision of Legal Information.

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## Chapter VII: Referrals

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### 7.1 Referrals of Ineligible Applicants

Programs may report as cases only those services provided to clients who are eligible for, and have been accepted for, legal assistance through a program's intake system or other procedure for verifying case and client eligibility. Referrals of applicants who are ineligible for assistance under the LSC Act, regulations, and other applicable law are matters, which may not be reported as cases. Similarly, referrals of applicants who are not accepted for service, because their legal problems are outside of program priorities, are matters which may not be reported as cases.

### 7.2 Referrals of Eligible Applicants

Programs may not report the referral of an eligible applicant as a case when the referral is the only form of assistance which the applicant receives from the program. Pursuant to 45 CFR § 1635.2(b), assistance which does not involve direct legal advice or legal representation of a client is a matter and not a case. The referral of an eligible applicant to another provider qualifies as a case only if:

- (a) the applicant is eligible for and accepted for service as required by § 2.4 of this Handbook;
- (b) the applicant's case is within program priorities and is not prohibited by the LSC Act, regulations or other applicable law, as required by § 2.1 of this Handbook; and
- (c) the program provides either Counsel and Advice or another type of case service defined in Chapter VIII of this Handbook prior to referring the client.

### 7.3 Referrals to PAI Attorneys, Subrecipients, or Program Offices

Programs may not report referrals to PAI attorneys, subrecipients, or offices within the same program as closed cases.<sup>40</sup> If a program refers a client to an attorney participating in the program's PAI component, the case may be reported as closed only after the PAI attorney has completed all work on the case and has reported the case as closed. Similarly, if a program refers a client to a subrecipient or to another office within the same program, the case may be reported as closed only after all work on the case has been completed by the subrecipient or other office, and the subrecipient or other office reports the case as closed.

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<sup>40</sup> For PAI referrals, *see* § 10.1(b)(i).

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## Chapter VIII: Case Definitions and Closure Categories

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### 8.1 Purpose of Case Closure Categories

The purpose of case closure categories is to delineate the level of service provided to the client in each case.<sup>41</sup> This Chapter includes definitions of common levels of case services which programs provide to eligible clients during the course of a case. All legal assistance recorded and reported to LSC as a case must:

- (a) qualify as a case, as defined by § 2.1 of this Handbook and 45 CFR § 1635.2(a);<sup>42</sup>
- (b) be provided to an eligible client, as defined by § 2.4 of this Handbook; and
- (c) be documented as required by Chapter V of this Handbook.

### 8.2 LIMITED SERVICE CASE CATEGORIES<sup>43</sup>

#### CSR Closure Category A – Counsel and Advice

A case closed in which the program provided legal advice to an eligible client should be closed as Counsel and Advice (e.g., the advocate ascertained and reviewed relevant facts, exercised judgment in interpreting the particular facts presented by the client and in applying the relevant law to the facts presented, and counseled the client concerning his or her legal problem).<sup>44</sup>

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<sup>41</sup> Prior CSR Handbook Closing Categories C – Referred After Legal Assessment, D – Insufficient Merit to Proceed, E – Client Withdrew, and J – Change in Eligibility Status have been discontinued and programs shall not apply those closing codes to cases closed after January 1, 2008.

<sup>42</sup> As specified by § 6.6 of this Handbook, the provision of direct legal advice to a client in a *pro se* clinic or workshop qualifies as a case which may be reported to LSC if the provision of advice meets the definition of a case found in § 2.1 of this Handbook and the person receiving the advice meets the definition of a client found in § 2.3 of this Handbook.

<sup>43</sup> CSR Closure Categories A and B include cases in which a referral has been made after the legal assistance was provided. Referrals without the provision of legal assistance should be reported as matters under the MSR system. Cases in which a referral is made after the provision of legal assistance may not be reported as both a CSR case and a matter. Also note that 45 CFR § 1611.9 does not require that a retainer be obtained in limited services cases.

<sup>44</sup> See the ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.6 on the Provision of Legal Information, “The giving of legal advice is legal representation and creates an attorney-client relationship.”

## **CSR Closure Category B – Limited Action<sup>45</sup>**

A case closed in which the program took limited action(s) on behalf of an eligible client that addressed the client's legal problem that is not so complex or extended as to meet the requirements for CSR Category L should be closed as Limited Action. Examples include, communications by letter, telephone or other means to a third party; preparation of a simple legal document such as a routine will or power of attorney; or legal assistance to a *pro se* client<sup>46</sup> that involves assistance with preparation of court or other legal documents.<sup>47</sup>

### **8.3 EXTENDED SERVICE CASE CATEGORIES**

#### **CSR Closure Category F – Negotiated Settlement Without Litigation**

A case closed in which the program negotiated and reached an actual settlement<sup>48</sup> on behalf of a client without any court or administrative actions pending should be closed as Negotiated Settlement Without Litigation. This category should be reserved for cases in which the program conferred with another party so as to reach a resolution of the client's legal problem. This category includes settlements negotiated with an administrative agency prior to the filing of a formal administrative proceeding.

#### **CSR Closure Category G – Negotiated Settlement With Litigation**

A case closed in which the program negotiated and reached an actual settlement on behalf of a client while a court or formal administrative action was pending should be closed as Negotiated Settlement With Litigation. This category should be reserved for cases in which the program conferred with another party so as to reach a resolution of the client's legal problem. Settlements of pending court or administrative actions should be closed in this category even if the court or administrative agency issues an order memorializing the settlement.

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<sup>45</sup> "Limited Action" as defined in this Handbook are synonymous with "brief services" as described in 45 CFR § 1611.2(e).

<sup>46</sup> Provided it meets the definition of a "case", legal assistance to *pro se* clients may be closed as CSR Closure Categories A – Advice and Counsel, B – Limited Action, or L – Extensive Service depending on the level of assistance provided to the client.

<sup>47</sup> The time limitation of the prior Handbook that a Brief Services case should be closed "as a result of an action taken at or within a few days or weeks of intake" has been eliminated. However, cases closed as Limited Action are subject to the time limitation on case closure found in § 3.3(a). This category is intended to be used for the preparation of relatively simple or routine documents and relatively brief interactions with other parties. More complex and/or extensive cases that would otherwise be closed in this category should be closed in the new CSR Closure Category L – Extensive Service.

<sup>48</sup> The file should contain documentation of the settlement, either an actual, written settlement, a written confirmation of the settlement with the opposing party, or, if neither of these are available, a copy of a communication to the client outlining the terms of the settlement. *Pro se* cases cannot be closed in this category.

This category includes only: (1) cases in which an appearance has been entered before a court or administrative agency as counsel of record; or (2) cases in which the settlement was reached prior to the program's entry as counsel of record, provided that the program was actually representing the client in the negotiations (not assisting a *pro se* client) and provided that there is documentation of the settlement in the case file – preferably a copy of the actual settlement agreement, written confirmation of the settlement with the opposing party, or, if neither of these are available, a copy of a communication to the client outlining the terms of the settlement.

### **CSR Closure Category H – Administrative Agency Decision**

A case closed in which the program represented a client in an administrative agency action that resulted in a case-dispositive decision by the administrative agency or body, after a hearing or other formal administrative process (e.g., a decision by the hearings office of a welfare department), should be closed as an Administrative Agency Decision. This category does not include settlements made during the course of litigation that are then approved by the administrative agency, voluntary dismissals or the grant of a motion to withdraw as counsel.<sup>49</sup> If the case is resolved informally through contacts with an administrative agency, but without any formal administrative agency action, the case should be closed as CSR Closure Categories B – Limited Action or F – Negotiated Settlement without Litigation, depending on the level of service.

### **CSR Closure Category I – Court Decision**

A case closed in which the program represented<sup>50</sup> a client in a court proceeding that resulted in a case dispositive decision made by the court should be closed as a Court Decision.<sup>51</sup> This category is divided into the following three subcategories:

- (a) Uncontested Court Decisions – either there is no adverse party or the adverse party does not contest the case;
- (b) Contested Court Decisions – there is an adverse party and that party contests the case;

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<sup>49</sup> See CSR Closure Categories G and L for guidance in closing such cases.

<sup>50</sup> Only cases in which the program attorney or advocate or PAI attorney is entered as counsel of record may be closed as CSR Closure Category H or I. Assistance to *pro se* litigants cannot be closed in CSR Closure Categories H or I.

<sup>51</sup> This does not include settlements made during the course of litigation approved by the administrative agency or court, voluntary dismissals or the grant of a motion to withdraw as counsel. However, although it may not be technically case dispositive, a case closed after a TRO or similar interim order made on the merits has been entered, may be closed in this category when the litigation is not pursued further.

- (c) Appeals to an appellate court taken from a decision of any court or tribunal (*See* 45 CFR §§ 1605.2 and 1605.3). This category does not include appeals or writs taken from administrative agency decisions or lower trial court decisions to a higher level trial court acting as an appellate court, whether they are on the record or *de novo* proceedings.<sup>52</sup>

### **CSR Closure Category K – Other<sup>53</sup>**

A closed case that does not fit any of the other CSR case closure categories should be closed as Other. Cases which fit two or more CSR categories may not be closed in this category, but should be closed in the category which best reflects the level of service provided.

### **CSR Closure Category L – Extensive Service (not resulting in Settlement or Court or Administrative Action)**

A case closed in which the program undertook extensive research, preparation of complex legal documents, extensive interaction with third parties on behalf of an eligible client, or extensive on-going assistance to clients who are proceeding *pro se* should be closed as Extensive Service. Some examples of extensive service include the preparation of complex advance directives, wills, contracts, real estate documents or other legal documents, or the provision of extensive transactional work. This category also includes cases closed after extensive interaction or negotiations with another party which do not result in a negotiated settlement. In addition, cases closed after litigation is initiated in which the program appears as counsel of record that do not result in a negotiated settlement, administrative agency or court decision, or in which an order of withdrawal or voluntary dismissal is entered should be closed in this category.<sup>54</sup>

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<sup>52</sup> Such cases should be closed only once as CSR Closure Category I(b) – Contested Court Decision.

<sup>53</sup> If a descriptive closure category is applicable, it should be used; otherwise the case should be closed as CSR Closure Category K.

<sup>54</sup> This closure category should be reserved for cases in which the assistance the program provides clearly exceeds the amount of work that would be performed for CSR Closure Categories A – Counsel and Advice or B – Limited Action and no other closing code is appropriate (e.g., F, G, H, or I). Factors that favor selection of CSR Closure Category L include but are not limited to: (1) a high level of factual complexity; (2) a highly sophisticated legal analysis; (3) drafting of non-routine original pleadings or legal documents; and (4) significant legal research. Although not controlling, programs may also consider whether a substantial amount of time was charged to the case as evidence of extensive services.

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## **Chapter IX: Legal Problem Categories and Codes**

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This Chapter lists common types of legal problems experienced by clients. Each closed case is to be assigned a numeric Legal Problem Code ranging from one to 99 describing the type of legal problem. Legal Problem Codes are grouped in ten broad Legal Problem Categories and are set out below:

### **CONSUMER/FINANCE**

- 01 – Bankruptcy/Debtor Relief
- 02 – Collection (Including Repossession/Deficiency/Garnishment)
- 03 – Contracts/Warranties
- 04 – Collection Practices/Creditor Harassment
- 05 – Predatory Lending Practices (Not Mortgages)
- 06 – Loans/Installment Purchase (Not Collections)
- 07 – Public Utilities
- 08 – Unfair and Deceptive Sales and Practices (Not Real Property)
- 09 – Other Consumer/Finance

### **EDUCATION**

- 11 – Student Financial Aid
- 12 – Discipline (Including Expulsion and Suspension)
- 13 – Special Education/Learning Disabilities
- 14 – Access (Including Bilingual, Residency, Testing)
- 15 – Vocational Education
- 19 – Other Education



## **EMPLOYMENT**

- 21 – Employment Discrimination
- 22 – Wage Claims and other FLSA (Fair Labor Standards Act) Issues
- 23 – EITC (Earned Income Tax Credit)
- 24 – Taxes (Not EITC)
- 25 – Employee Rights
- 26 – Agricultural Worker Issues (Not Wage Claims/FLSA Issues)
- 29 – Other Employment

## **FAMILY**

- 30 – Adoption
- 31 – Custody/Visitation
- 32 – Divorce/Separation/Annulment
- 33 – Adult Guardian/Conservatorship
- 34 – Name Change
- 35 – Parental Rights Termination
- 36 – Paternity
- 37 – Domestic Abuse
- 38 – Support
- 39 – Other Family

## **JUVENILE**

41 – Delinquent

42 – Neglected/Abused/Dependent

43 – Emancipation

44 – Minor Guardian/Conservatorship

49 – Other Juvenile

## **HEALTH**

51 – Medicaid

52 – Medicare

53 – Government Children’s Health Insurance Programs

54 – Home and Community Based Care

55 – Private Health Insurance

56 – Long Term Health Care Facilities

57 – State and Local Health

59 – Other Health

## **HOUSING**

61 – Federally Subsidized Housing

62 – Homeownership/Real Property (Not Foreclosure)

63 – Private Landlord/Tenant

64 – Public Housing

65 – Mobile Homes

66 – Housing Discrimination

67 – Mortgage Foreclosures (Not Predatory Lending/Practices)

68 – Mortgage Predatory Lending/Practices

69 – Other Housing

## **INCOME MAINTENANCE**

71 – TANF

72 – Social Security (Not SSDI)

73 – Food Stamps

74 – SSDI

75 – SSI

76 – Unemployment Compensation

77 – Veterans Benefits

78 – State and Local Income Maintenance

79 – Other Income Maintenance

## **INDIVIDUAL RIGHTS**

81 – Immigration/Naturalization

82 – Mental Health

84 – Disability Rights

85 – Civil Rights

86 – Human Trafficking

89 – Other Individual Rights

## **MISCELLANEOUS**

91 – Legal Assistance to Non-Profit Organization or Group (Including Incorporation/Dissolution)

92 – Indian/Tribal Law

93 – Licenses (Drivers, Occupational, and Others)

94 – Torts

95 – Wills/Estates

96 – Advance Directives/Powers of Attorney

97 – Municipal Legal Needs

99 – Other Miscellaneous

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## Chapter X: Private Attorney Involvement Cases

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### 10.1 Definition of a Private Attorney Involvement Case

For CSR purposes, a PAI case is defined as the provision of permissible legal assistance by a private attorney participating in a recipient's PAI program to an eligible client with a legal problem (or set of closely related legal problems) accepted for assistance in accordance with the requirements of the LSC Act, regulations and other applicable law. This provision involves only PAI cases and does not affect any other PAI activities authorized under 45 CFR Part 1614.

- (a) Legal services programs may record and report the provision of legal assistance by a private attorney as a case only if:
  - (i) all provisions of Chapter II of this Handbook and requirements of 45 CFR § 1614.3(d) are met; and
  - (ii) the legal assistance to the client was provided by a private attorney participating in a recipient's PAI program in either a compensated or a volunteer (*pro bono*) capacity.
- (b) Programs shall report cases as follows:
  - (i) In cases in which a PAI referral is unsuccessful and program staff provides legal assistance to the client, the case must be closed and reported as a staff case, not a PAI case, and the time for the legal assistance should be charged to staff and not to the program's PAI allocation. However, it is appropriate to charge the time expended for the attempted referral to PAI.
  - (ii) In cases in which a PAI referral is unsuccessful and program staff has not provided any legal assistance to the client, the file may not be closed as a CSR case. However, the time expended for the attempted referral may be charged to the program's PAI allocation.
  - (iii) In cases in which a private attorney co-counsels a case with program staff, the case may be closed either as a PAI case or as a staff case (but not both) in the discretion of the program.
  - (iv) In cases in which both program staff and a private attorney provide legal assistance, but have not co-counseled the case, the program should close the case as a staff or a PAI case depending on whether the staff or private attorney provided the highest level of legal assistance. For example, if a private attorney gave some advice and counsel and staff obtained a court order, the case should be closed as a staff case.

## 10.2 Single Recording of PAI Cases

Through the use of automated case management systems and procedures, programs shall ensure that cases involving the same client and specific legal problem are not recorded and reported to LSC more than once (e.g., as a staff case and as a PAI case). Programs shall ensure single recording of PAI cases in conformity with § 3.2 of this Handbook.

## 10.3 Timely Closing of PAI Cases

Programs shall ensure the timely closing of PAI cases so that case service reports submitted to LSC contain current and accurate information about both open and closed cases for the grant year (January 1 through December 31).

- (a) Compensated attorneys. For cases in which a PAI attorney is under contract to a program for PAI services, the guidelines for timely case closing articulated in § 3.3 of this Handbook for staff cases apply.
- (b) Volunteer (*pro bono*) attorneys. For cases in which private attorneys have rendered assistance *pro bono*, a program shall report such PAI cases as closed no later than a year after the calendar year in which assistance ceased.<sup>55</sup>

Programs shall employ one or more methods of ensuring timely closing of PAI cases. A possible method includes the generation of case management reports which indicate the length of time PAI cases have been open. A review of such reports should establish whether cases are being timely closed.

## 10.4 Case Oversight and Follow-Up

Programs shall create oversight and follow-up systems and procedures sufficient to track the timely referral, follow-up, and disposition of PAI cases.<sup>56</sup>

Hallmarks of effective oversight and follow-up systems and procedures include but are not limited to:

- A program policy that articulates a specified time period for referral after which the case is either sent back for staff assistance or the client is informed that assistance cannot be provided.

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<sup>55</sup> For example, in the event a volunteer PAI attorney closed an advice and counsel case in June 2005 but did not report it as closed to the program until June 2006, the program could still report the case in its 2006 CSR. However, if the volunteer PAI attorney closed the advice and counsel case in June 2005 but did not report it as closed to the program until June 2007, such case is untimely and cannot be reported in the CSR.

<sup>56</sup> See 45 CFR § 1614.3(d)(3).

- A tickler system that reminds staff to generate periodic letters, telephone calls, or e-mails to private attorneys requesting status and/or closure updates.
- The selection of appropriate closing codes by program staff for the legal assistance provided by PAI attorneys or review and approval by the program of closing codes selected by the PAI attorney.
- A program policy that articulates a plan to: (1) identify and periodically follow-up on all open PAI cases; and (2) administratively close untimely or dormant cases so that they are not included in future CSRs.

## 10.5 PAI Case Documentation

For each PAI case reported to LSC, programs shall record case and client information in accordance with Chapter V of this Handbook. For each PAI case reported to LSC, such information shall describe (at a minimum) the information required in §§ 5.2 (client eligibility), 5.3 (income), 5.4 (assets), 5.5 (citizenship and alien eligibility documentation requirements),<sup>57</sup> 5.6 (legal assistance documentation requirements), the client's name, legal problem(s), and a description of the assistance provided to the client.<sup>58</sup>

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<sup>57</sup> In the event either program staff or the PAI attorney has in-person contact with the client, the program shall ensure that the case file contains a written citizenship attestation or documentation that the client's alien eligibility documents have been reviewed by either the program or the private attorney. *See* 45 CFR § 1626.6. Cases without such documentation may not be reported to LSC unless the case falls within articulated exceptions (e.g., VAWA or Trafficking cases).

<sup>58</sup> There must be sufficient information in the file or in the case management system to support the closing code selected to close the case. In the absence of closing information from the PAI attorney's office, a document obtained from the court or other reliable source is sufficient.

# APPENDIX





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

**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

**President**  
Helaine M. Barnett

**Board of Directors**  
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Atlanta, GA  
*Chairman*

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Buffalo, NY

Florentino A. Subia  
El Paso, TX

Ernestine P. Watlington  
Tremont, PA

***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.

**Program Letter 06-2**

**TO:** All LSC Program Directors

**FROM:** Helaine M. Barnett, President

**DATE:** February 21, 2006

**SUBJECT:** Violence Against Women Act 2006 Amendments

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***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.<sup>1</sup> 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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<sup>1</sup> "Violence Against Women and Department of Justice Reauthorization Act of 2005", P.L. 103-322

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,<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> 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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<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> 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.<sup>6</sup>

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<sup>6</sup> 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 permanent 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.<sup>7</sup>

***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.<sup>8</sup>

***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.<sup>9</sup>

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<sup>7</sup> 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.

<sup>8</sup> This follows the provision set forth in 45 C.F.R. § 1626.9.

<sup>9</sup> 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.