

Program Letter 06-2

TO: All LSC Program Directors

FROM: Helaine M. Barnett, President *HMB*

DATE: February 21, 2006

SUBJECT: Violence Against Women Act 2006 Amendments

Introduction

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

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

Shall not be construed to prohibit a recipient from providing related legal assistance to –

(i) an alien who has been battered or subjected to extreme cruelty or a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

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

Pub. L. 103-322, Section 104.

¹ "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,² the VAWA 2006 Amendments expand the exception to the general prohibition on accepting and representing undocumented applicants for services in three ways.

- First, recipients are now permitted to use both LSC and non-LSC funds to provide to an otherwise 1626-ineligible alien legal services that are “directly related” to the prevention of, or obtaining relief from, the battery or cruelty, sexual assault or trafficking, or the crimes such as those listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act [8 USC 1101(a)(15)(U)(iii)] or whose child has been similarly victimized. Previously, such legal assistance by grantees was permitted only if supported wholly with non-LSC funds.
- Second, recipients are now permitted to provide “related legal assistance” to otherwise ineligible aliens who are victims of domestic abuse even if they are not married to (or the child of) their abusers. Previously, such assistance was permitted only if the domestic abuse was perpetrated by the spouse (or parent) of the victim.
- Third, recipients may now also provide related legal assistance, supported with LSC funds, to new categories of otherwise ineligible aliens in addition to those who have been battered or subject to extreme cruelty.

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

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

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

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

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

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

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

Who is covered by the VAWA 2006 Amendments?

In addition to covering aliens who have been battered or subjected to extreme cruelty, the VAWA 2006 Amendments expand coverage to permit LSC grantees to serve victims of sexual assault or trafficking⁴ or aliens who qualify for a “U” visa under Section 101(a)(15)(U) of the Immigration and Nationality Act (INA). A “U” visa provides for lawful temporary status for an alien who the Attorney General determines has suffered substantial abuse as a victim of certain criminal activity, possesses information concerning the criminal activity, is cooperating with or likely to be helpful to law enforcement officials investigating the criminal activity and such criminal activity violated U.S. law or took place in the U.S.⁵ Certain family members of a “U” visa applicant may also apply for “U” visa relief.

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

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

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

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

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

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

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

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

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

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

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

Yes. LSC grantees may assist an alien in the filing of the petition for a “U” visa.⁷

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

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

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

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

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

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

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

Are these cases CSR reportable?

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