



PROGRAM LETTER 05-03

TO: All Executive Directors

FROM: Helaine M. Barnett *HMB*

DATE: December 8, 2005

SUBJECT: LSC Guidance on Programs' Response to Hurricane Katrina

President
Helaine M. Barnett

Board of Directors
Frank B. Strickland
Atlanta, GA
Chairman

Lillian R. BeVier
Charlottesville, VA
Vice Chairman

Thomas A. Fuentes
Lake Forest, CA

Herbert S. Garten
Baltimore, MD

David Hall
Boston, MA

Michael D. McKay
Seattle, WA

Thomas R. Meltes
Chicago, IL

Bernice Phillips
Buffalo, NY

Florentino A. Subia
El Paso, TX

Ernestine P. Watlington
Harrisburg, PA

At the end of August 2005, an unprecedented national crisis confronted our country. Hundreds of thousands of individuals and families were uprooted from their homes and communities and relocated to neighboring and distant states without knowing if or when they would be able to return. LSC programs were quick to respond to this crisis and it has been heartening to see so many programs reach out to help programs in the affected Gulf States.¹

This memo is to keep you all informed of what LSC has been doing regarding our programs directly affected by Hurricane Katrina and those programs in areas that have large numbers of evacuees who are trying to provide legal assistance to persons affected by this disaster.

We recognize the critical roles legal services programs play in the recovery process. This national crisis is creating, and will continue to create for some time, an exceedingly high demand for legal services. LSC-funded programs across the country, in the affected states and in those states far away from the physical damage done by the storm, face an expanding demand for legal services from significant numbers of evacuees who in the coming months will need assistance with an array of legal issues. At the same time, you are already working at capacity to provide legal assistance to existing clients in your service areas.

We know that you will continue to do all that you can to meet these needs. Many of you have already asked for guidance on the issues that you will confront in the coming months. We want to ensure that LSC programs do all that they can to meet these needs and for that reason, are providing this guidance on service delivery issues, based on LSC's review of those regulations and reporting requirements which may directly involve the programs providing disaster assistance to persons affected by Hurricane Katrina.

¹ This document was first released to LSC Executive Directors as a memorandum from LSC President Helaine Barnett on September 9, 2005. Because the issues addressed by the memorandum will have an impact for several years, LSC is updating the memorandum and issuing it as Program Letter 05-03. All references to Hurricane Katrina should be read to encompass the later Hurricanes Rita and Wilma that occurred in 2005.

LSC Regulations

At all times, the underlying substantive restrictions and requirements continue to apply to LSC-funded programs and LSC expects recipients to act accordingly. However, programs are reminded that the regulations provide flexibility to allow you to provide services to the vast majority of the persons affected by Hurricane Katrina who seek assistance from you. In recognition of the high demand for services caused by this national crisis, LSC will give broad and flexible interpretations to timeframes and documentation provisions in the regulations to programs providing disaster assistance to persons affected by Hurricane Katrina.

45 CFR 1611 — Eligibility - Income: The revised regulation became effective as of September 7, 2005. Under this regulation, programs have discretion to accept clients with incomes up to 200 percent of the Federal Poverty Guidelines, provided that they can meet at least one of the eligibility factors listed in 1611.5(a)(4). Programs should apply these factors broadly in favor of eligibility. See, e.g., 161 1.5(a)(4)(i) and (vii).

45 CFR 1611 — Eligibility - Assets: The revised regulation provides programs with significant flexibility both in setting asset ceilings and in determining the availability to the applicant of asset-based resources. Programs should exercise this flexibility particularly in determining the availability of asset-based resources for persons affected by this disaster.

With regard to §1611, programs can follow the new regulations whether they have formally approved new policies or not, until such time as their Boards adopt such policies.

45 CFR 1620 — Priorities: The governing boards of programs should have written policies that provide guidance for undertaking emergency legal assistance. LSC assumes that programs' policies required by 1620.4 provide the necessary authority and guidance to enable the provision of legal assistance on disaster relief work that might fall outside the scope of adopted priorities.

45 CFR 1626 — Legal Assistance to Aliens: This regulation provides programs with the flexibility to provide legal assistance in an emergency (such as the circumstances created by Hurricane Katrina) to persons prior to compliance with the documentation requirements of the regulation. See 1626.8. In light of the difficult circumstances created by Hurricane Katrina and in light of the Department of Homeland Security's decision on September 6, 2005 to temporarily suspend requirements for I-9 verification,² LSC did not require immediate verification of documentation of alien eligibility for services rendered to those affected by Hurricane Katrina, until further notice.

² The Department of Homeland Security (DHS) announced on September 6, 2005 that for a period of 45 days it would refrain from initiating employer sanction enforcement actions with regard to individuals who were unable to provide identity and eligibility documents as a result of Hurricane Katrina. As of October 21, 2005, that 45 day period elapsed and DHS expects employers to fully complete the Form I-9 for those persons recently hired who were unable to provide proper documentation.

Now, however, individuals should at least be able to demonstrate that they have applied for documentation to the relevant agencies. LSC programs should, as of the date of this Program Letter, comply with the non-emergency requirements of 45 CFR 1626. In those emergency situations where the provisions of 45 CFR 1626.8 apply, legal assistance may still be provided as allowed.

45 CFR 1638 — Solicitation: The need for programs to reach out to evacuees, many of whom are or will be in cities unfamiliar to them, and to reach out to others affected by this disaster, to inform them of available disaster assistance and to provide substantive assistance with their myriad legal needs is substantial. LSC encourages programs to be proactive in going into the communities, to the temporary shelters, to other temporary housing, to the FEMA centers, etc., to provide services. Under this regulation, programs can provide outreach and community education, can answer questions regarding individual participant's legal situations and can represent people who seek assistance from the program as a result of those activities.

Case Service Reporting — Documentation

It continues to be important to include adequate documentation in case files. However, during the immediate increased demand for services, it may not always be possible to document files to the extent that you would do in less demanding times. Providing services to clients is of paramount importance. Nonetheless, programs need to identify case files that are disaster-related. A simple method of identification would be to put a "DRK" (Disaster Relief Katrina) notation on the case file or a description in the case management system.³ In its ongoing compliance function, LSC will make note of the extenuating circumstances faced by the affected programs and will be appropriately flexible in assessing a program's efforts at documentation.

LSC Reporting Requirements

LSC has a number of administrative reporting requirements. Rather than set a number of arbitrary, revised dates for these requirements, requests from programs providing disaster assistance to persons affected by Hurricane Katrina for extensions of the various LSC reporting requirements will be viewed favorably.

Additional LSC and National Partners' Response

Since this crisis began to unfold, LSC has continued to work closely with our national partners, NLADA, ABA, IOLTA programs and others, to ensure at a national level we are providing the support, leadership and coordination that you expect of us and we expect of ourselves. As noted above, we have heard from so many of you with your offers of all kinds of assistance for your colleagues. In an effort to capture and make available to those who would benefit from these offers, LSC is collaborating with NLADA, the ABA and other national partners on:

³ This "DRK" notation on the case file should be used for legal services provided for all hurricane-related cases, i.e., Hurricanes Katrina, Rita and Wilma.

- **Creation of Disaster Assistance Website** — We have jointly developed a website, www.katrinalegalaid.org, that serves as a one-stop portal to an incredible array of disaster relief resources, including disaster assistance materials, volunteer lawyers and substantive law information. Pro Bono Net is hosting the site for our organizations and is doing so on a pro bono basis, for which the legal services community is extremely grateful.
- **Regularly Scheduled Conference Calls** — We and our national partners are participating in and helping to coordinate conference calls with staff in the affected states so that we get everyone in the information loop at the same time. These calls are with a broad range of people including executive directors in the affected states, substantive law experts, programs that are offering specific assistance, and other national partners. This is a wonderful, dynamic way to tap into the variety of skills and experiences that are needed to help us provide support throughout the national community during this time.

Disaster Relief Funding

We are very cognizant of the need for additional funds to support programs providing disaster assistance. We are discussing this with OMB and Congress and will keep you informed.

When we look back in several years at our response to this national crisis, we believe that legal services programs will be able to say that we made the difference for thousands of clients and gave them a voice and some degree of control in a situation that was, in many ways, out of control. The lasting effects of our work will undoubtedly be deeply felt by our clients. Our programs in Louisiana and Mississippi lost entire offices and some of their staff lost homes and all their possessions, and there were property losses in Alabama, Florida and Texas. These are terrible losses that we can never erase. What we can do is attempt to meet as much of the emerging legal need as possible. As a community, we will come out of this stronger and better.

LSC staff are available to programs wherever it would be helpful and stand ready to do anything that we can to assist your efforts in your communities. Please continue to let us know how we can help.