



LEGAL SERVICES CORPORATION

Notice—Agricultural Worker Population Estimates for Basic Field—Migrant Grants

AGENCY: Legal Services Corporation

ACTION: Notice

SUMMARY: On February 3, 2015, the Legal Services Corporation (LSC) published a notice in the Federal Register requesting comment on a proposal to update the agricultural worker population estimates used for determining the amount of Basic Field funds that LSC will distribute through Basic Field—Migrant grants. 80 FR 5791. Based on comments received in response to this notice, LSC has identified three areas for further public input.

Specifically, LSC seeks (1) comments on the methodology and data used for estimating the agricultural worker population by the U.S. Department of Labor's Employment Training Administration (ETA) considering the additional ETA materials published with this notice; (2) comments on a new estimate of aliens within the agricultural worker population who are eligible for services from LSC grantees based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities; and (3) submission of available and reliable state- or region-specific, data-based estimates of the population of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions.

LSC will accept such estimates only if they include the data and methodologies used, including authorship and other relevant information.

DATES: Comments must be submitted on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments must be submitted to Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St., NW, Washington, DC 20007-3522; 202-337-6519 (fax); mfreedman@lsc.gov.

LSC prefers electronic submissions via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION, CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St., NW, Washington, DC 20007-3522; 202-295-1623 (phone); 202-337-6519 (fax); mfreedman@lsc.gov.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

The Legal Services Corporation (LSC) seeks public comment on three enhancements to its proposal to obtain and implement more current estimates of the U.S. agricultural worker population eligible for LSC-funded legal assistance. LSC will use those estimates to determine how much of the appropriated Basic Field Programs funds to provide through Basic Field—

Migrant grants and the distribution of those grants among the states and other LSC service areas.

On February 3, 2015, LSC published a notice in the Federal Register at 80 FR 5791 requesting comment on a proposal to recalculate the amount and distribution of funds through these grants based on new estimates obtained from the U.S. Department of Labor's Employment Training Administration (ETA). LSC set out three issues for comment:

- A. Implementing the new estimates for the distribution of grants beginning in January 2016.
- B. Phasing in the changes by providing intermediate funding halfway between the old and new levels for 2016 and fully implementing the new levels for 2017.
- C. Obtaining updated estimates every three years for recalculation on the same statutory cycle as LSC obtains updated poverty-population data from the U.S. Census Bureau for the distribution of LSC's Basic Field Programs appropriation.

Based on the eleven comments received in response to the notice, LSC identified three issues for additional public comment.

1. LSC is providing increased access to the original source data and methodology used by ETA, and LSC seeks comments on ETA's methodology and data.

2. LSC seeks comments on a new proposal for estimating the number of aliens within the agricultural worker population who are eligible for services from LSC grantees pursuant to 45 CFR 1626.4, based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities.
3. LSC will accept submission of available and reliable state- or region-specific, data-based estimates of the population of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions—LSC will accept such estimates only if they include the data and methodologies used, including authorship and other relevant information.

Individuals and organizations can submit materials regarding these three topics to LSC at the address noted above before the specified deadline.

LSC has posted on www.lsc.gov the original notice, the original ETA report, LSC's memo regarding this issue, the comments received, and this notice with all referenced tables and appendices. www.lsc.gov/ag-worker-data

II. BACKGROUND

On January 21, 2015, LSC Management issued the *LSC Agricultural Worker Population Estimate Update—LSC Management Report to the LSC Board of Directors* (LSC Management Report) providing a detailed background and discussion of the need for new population estimates to

inform LSC’s decisions about grant funding for legal services to agricultural workers. www.lsc.gov/ag-worker-data (updated January 30, 2015 version of the report).

Briefly summarized, Congress annually appropriates funds to LSC for supporting legal services for eligible clients through grants to “Basic Field Programs” in each state, territory, and the District of Columbia on a per-capita basis using poverty-population data from the U.S. Census Bureau. Pub. L. 104-134, tit. V, Sec. 501(a), 110 Stat. 1321, 1321-50 (1996), as amended by Pub. L. 113-6, div. B, tit. IV, 127 Stat. 198, 268 (2013) (LSC funding formula adopted in 1996, incorporated by reference in LSC's appropriations thereafter, and amended in 2013). LSC divides the total per-capita funding for the area into one category for “Basic Field—General” grants and another category for “Basic Field—Migrant” grants (Migrant Grants) to serve the “special difficulties of access to legal services or special legal problems” of agricultural workers. 42 U.S.C. 2996f(h) (LSC Act requirement that LSC address such issues for farmworkers). LSC determines where to provide Migrant Grants and how much of the Basic Field Programs appropriation to allocate to each Migrant Grant based on the agricultural worker population of that area.

The U.S. Census Bureau does not estimate populations of migrant workers or agricultural workers. For Migrant Grants, LSC has been using information based on historical estimates dating back to 1990. Furthermore,

those estimates include only migrant workers and do not count the entire population of agricultural workers—migrants and non-migrants—that LSC expects grantees to serve with Migrant Grants.

Unlike the U.S. Census Bureau, ETA collects data and provides estimates of the agricultural-worker population for federal grants serving the needs of the agricultural workers in the U.S. LSC contracted with ETA to obtain better and more current estimates of the size and distribution of the population of agricultural workers and their dependents who are eligible for services provided by LSC grantees, and who have incomes below the poverty line (the benchmark used by the U.S. Census Bureau for defining the poverty population that LSC uses for distribution of the Basic Field Programs appropriation). ETA provided LSC with these estimates, including state-by-state breakdowns.

The LSC Management Report described the need for special legal services grants to serve agricultural workers and their dependents, how LSC funds those legal services, and the need to update population estimates for those grants. LSC also provided the new national and state-by-state estimates of the agricultural worker population eligible for LSC services as provided by ETA.

On February 3, 2015, LSC published a notice in the Federal Register at 80 FR 5791 seeking comments on:

- A. using the new estimates for distribution of Migrant Grants beginning in January 2016;
- B. phasing in the funding changes to provide intermediate funding halfway between the old and new levels for 2016 and to fully implement the new levels for 2017; and
- C. obtaining and implementing new estimates every three years on the same cycle as LSC obtains and implements new poverty-population data for LSC's Basic Field—General grants.

III. ANALYSIS OF COMMENTS RECEIVED

LSC received eleven comments from eight organizations and three individuals. The National Legal Aid and Defender Association (NLADA) submitted two comments—one from the NLADA Civil Policy Group and one from the NLADA Farmworker Section. The American Bar Association commented through its Standing Committee of Legal Aid and Indigent Defense. Six LSC grantees submitted comments: (1) Georgia Legal Services, (2) Iowa Legal Aid, (3) the Michigan Advocacy Program (Legal Services of South Central Michigan and Farmworker Legal Services), (4) Southern Minnesota Regional Legal Services, (5) Legal Aid of Nebraska, and (6) Legal Action of Wisconsin. Three individuals submitted comments.

Generally, the comments supported using better estimates for distributing funds for these grants. This section summarizes the comments

and identifies three issues about which LSC now seeks further comment.

LSC does not seek comment on any of the other issues in the original notice or comments.

A. The need for specialized services and separate grants to support legal services for agricultural workers.

The comments all affirmed the need for specialized services to agricultural workers and dependents, and endorsed continuing to separate funds for grants for those specialized services out of the Basic Field Programs appropriation. These comments agreed with LSC's determination that due to a variety of factors—including social, cultural, and geographic isolation and the unique body of laws governing agricultural employment—eligible agricultural workers and their families have special legal problems and difficulties accessing civil legal services that are different from those faced by the general population of eligible clients. Thus, consistent with the LSC Act's requirement to address such issues, LSC should provide separate Migrant Grants.

B. More current estimates of the population of agricultural workers.

The comments supported LSC's proposal to obtain and use more current estimates of the size of the agricultural worker population within each state.

C. Updating the definition of agricultural workers.

Most comments supported LSC's proposal to update its definition of eligible agricultural workers and dependents to include all crop workers (migrant, seasonal, and otherwise), livestock workers, and forestry workers.

One LSC grantee recommended limiting the parameters to people who perform agricultural work as migrants and excluding non-migrant workers. One individual expressed concern about the impact of including livestock and forestry workers (or other non-traditional agricultural workers) in the national count of "agricultural workers." That commenter argued that those other populations have less need for specialized legal services than people working in traditional hand-harvest labor. Furthermore, that commenter expressed concern that the inclusion of these workers would result in a shift in funding and service delivery from the "traditional farmworker states" to other states.

LSC will include the previously-proposed categories of livestock and forestry workers (and other non-migrant agricultural workers) in the new estimates as supported by many of the comments. LSC agrees that migrant workers and their dependents face particular challenges because of their geographic mobility and heightened social and cultural isolation. For the reasons set forth in the LSC Management Report, the legal needs of non-migrant agricultural workers are more similar to those of migrant agricultural workers than to those of non-agricultural workers and are most

efficiently and effectively addressed by legal services providers with experience serving those unique needs. Thus, LSC can best serve the legal needs of all individuals eligible for LSC-funded services by allocating funds to the Migrant Grants for all agricultural workers rather than dividing the agricultural worker population between Migrant Grants and Basic Field—General grants.

The comments expressing concerns that a modification in the definition of agricultural workers will alter the distribution of funds among the states are based on a misunderstanding regarding the allocation of funding to Migrant Grants. *Changes in Migrant Grant funding in one state will not affect Migrant Grant funding in any other state.* Rather, “funding for migrant legal services is based on the estimated size of the migrant poverty population *in each geographic area . . .* [and] the funding for this population is ‘backed out’ of the funding *for the rest of [that] state’s poverty population.*” *LSC Management Report*, 19 (emphasis added). Thus, increasing the agricultural-worker count for one State will have *no effect* on any LSC grants in any other state.

Finally, some comments also suggested that LSC include off-farm fruit and vegetable canning workers in its definition of agricultural workers because those workers can face the same barriers to accessing civil legal assistance experienced by the agricultural workers currently included in LSC’s “agricultural worker” definition. The ETA expert panel recommended

excluding those off-farm workers from the definition of agricultural workers because those workers are not subject to the special Fair Labor Standards Act rules that apply to the other categories of agricultural workers. *See* 29 CFR part 780 (exemptions for agricultural work). Rather, those off-farm workers are subject to the same Fair Labor Standards Act rules as other non-agricultural U.S. workers. Furthermore, the Migrant and Seasonal Agricultural Worker Protection Act does not apply to local workers employed in packing, processing, or canning operations. Therefore, LSC will not include off-farm fruit and vegetable canning workers in the “agricultural worker” definition.

One individual commented that LSC should provide funds to serve both eligible and ineligible workers. LSC does not structure special-purpose grants to serve ineligible people.

D. Methodological Issues

Some comments questioned ETA’s methodology, source data, and the resulting estimates. As discussed in more detail in Section IV below (Areas for Further Public Input), these comments focused on (1) potential inaccuracies in ETA’s final state estimates based on the use of the National Agricultural Worker Survey (NAWS) and United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) regional ratios, (2) the lack of access to the source data and methodology used by ETA, and (3) the need for adjustments to the estimates for aliens eligible for

LSC-grantee services based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities. 45 CFR 1626.4—Aliens eligible for assistance under anti-abuse laws. LSC will address these concerns through the information provided in this notice for additional comment.

Some comments also asked if the count of eligible dependents of farmworkers excluded as “unauthorized” aliens who are spouses, parents, or (in some cases) children of U.S. citizens and who are beneficiaries of pending I-130 petitions for permanent residence. LSC grantees can serve those individuals under 45 CFR 1626.5(b). ETA reported that the NAWS survey instrument is designed to identify individuals with pending I-130 petitions, so that those individuals were included in the eligible population estimate.

E. Implementation of new estimates

All comments endorsed a phase-in approach, while many suggested a delay to allow grantees (both farmworker and basic field grant recipients) time to implement appropriate delivery changes based on new estimates. LSC’s decision to publish this notice seeking additional comment has moved implementation to January 2017. LSC will phase in funding changes so that one-half of the transition occurs in 2017 and the full changes occur in 2018.

All comments supported LSC’s proposal to update the estimates at regular intervals. These comments agreed with LSC that updating those estimates on a more regular basis would cause less disruption for recipients in the future.

A number of comments, however, questioned whether LSC’s proposal to update these estimates in three-year intervals would be sufficiently regular enough to account for rapid changes in agricultural worker populations. Furthermore, comments requested that LSC accept additional public comment once more information is known about the impact of the Census Bureau’s recent announcement concerning discontinuing the so-called “three-year estimates” produced in conjunction with the American Community Survey. LSC will adopt the proposed triennial adjustment because Congress mandates that LSC obtain updated poverty-population data from the Census Bureau every three years for redistribution of the Basic Field Program appropriation. Pub. L. 104—134, tit. V, 501(a)(2)(A), 110 Stat. 1321, 1321-51 (1996), as amended by Pub. L. 113—6, div. B, tit. IV, 127 Stat. 198, 268 (2013) (LSC funding formula adopted in the 1996 LSC appropriation, incorporated by reference in LSC’s appropriations thereafter, and amended in the 2013 LSC appropriation). LSC grantees can budget and plan service delivery better if LSC makes one adjustment to the distribution of grant funds every three years that includes both (1) the national distribution *among* states and territories and (2) the local distribution *within* each state or territory between farmworker grants and general-purpose grants.

IV. AREAS FOR FURTHER PUBLIC INPUT

LSC has identified three additional areas for public comment.

A. *LSC is providing increased access to the original source data and methodology used by ETA, and LSC seeks comments on ETA's methodology and data.*

Some comments maintained that they could not evaluate the validity of the ETA estimates because they did not have all the necessary information about the methodologies and data used to develop those estimates. LSC has provided greater access to the data and methodology used by ETA by producing the following additional tables. All tables are published at www.lsc.gov/ag-worker-data.

Table I—Updated Estimates of the Size and Geographic Distribution of the LSC-Eligible Agricultural Worker Population and the Sources and Calculations Used to Develop Those Estimates

Table I is a forty-three-column table that provides updated estimates of the LSC-Eligible Agricultural Worker Population for each state, for each region, and nationally and identifies all of the data sources, methods and calculations on which the updated agricultural working population estimates are based.

*Table II—National and State Estimates of the LSC-Eligible
Agricultural Worker Population—Summary Table*

Table II is an abbreviated version of Table I. This fifteen-column table provides the updated estimates of the LSC-Eligible Agricultural Worker Population for each state, for each region, and nationally and identifies the most significant steps in the estimation formula on which the updated agricultural working population estimates are based.

*Table III—Percentages of Agricultural Workers by National
Agricultural Worker Survey (NAWS) Region and State Who Are
Authorized and in Poverty*

Table III is a five-column table that identifies for each state, for each region, and nationally: (1) the percentage of agricultural workers in poverty, (2) the percentage of farmworkers that are U.S. citizens or authorized aliens, and (3) the percentage of farmworkers that are in both categories.

*Table IV—Average Numbers of Dependents per Farmworker by
National Agricultural Worker Survey (NAWS) Region and State*

Table IV is a five-column table that identifies for each state, for each region, and nationally the percentage of agricultural worker dependents who are: (1) in poverty, (2) U.S. citizens or authorized aliens, and (3) in both categories.

Table V—Number and Percentage of LSC-Eligible Agricultural Workers in Each State Who Are Crop, Livestock, and Forestry Workers

Table V is a nine-column table that identifies for each state, for each region, and nationally the percentage and number of agricultural workers who are eligible (*i.e.*, in poverty and either U.S. citizens or authorized aliens) and who are crop, livestock, or forestry workers.

Table VI—Number of Unauthorized and Below-Poverty Farmworkers Eligible for LSC-Funded Services Pursuant to Anti-Abuse Provisions of 45 CFR 1626.4(3)

Table VI is a twelve-column table that identifies each for state, for each region, and nationally the number of unauthorized and below-poverty agricultural workers eligible for LSC-funded services pursuant to the Anti-Abuse provisions of 45 CFR 1626.4.

Table VII—LSC-Eligible Agricultural Worker Population by State: Comparison of Current Population Estimates and Updated January 2016 Department of Labor, Employment and Training Administration (ETA) Estimates

Table VII is a seven-column table that provides for each state and nationally the estimated migrant population currently used

to allocate LSC funding and the updated estimated agricultural worker population.

Because of NAWS survey data confidentiality issues, not all survey data can be published. Persons or entities needing access to the restricted NAWS data may seek approval to access the data in either (1) Washington, D.C., at the Employment and Training Administration, U.S. Department of Labor, or (2) in Burlingame, California, at the office of ETA's NAWS contractor, JBS International. The request should be submitted in writing to Mr. Daniel Carroll at ETA—carroll.daniel.j@dol.gov—and identify the need for the NAWS information for commenting on this LSC proposal and explain why the NAWS public data file does not provide sufficient information.

B. LSC seeks comments on a new proposal for estimating the number of aliens within the agricultural worker population who are eligible for services from LSC grantees pursuant to 45 CFR 1626.4, based on sexual abuse, domestic violence, trafficking, or other abusive or criminal activities.

Several comments questioned the potential exclusion in the published estimates of certain non-U.S. citizen “unauthorized” farmworkers who could be LSC eligible pursuant to specific anti-abuse statutes, as provided in 45 CFR 1626.4. LSC separates Basic Field Programs funds into Basic Field—General Grants and Migrant Grants in order to make LSC funds available through grantees that are best equipped to serve the needs of different parts

of the population of LSC-eligible clients. LSC therefore needs to use the best available information to estimate those populations and direct funds accordingly. Notably, these estimates do not affect the eligibility of any applicants for services; the numbers are used only for distribution of funding.

It is widely recognized by experts in the field that significant numbers of non-U.S. citizen farmworkers without work authorization are already subject to the abusive or criminal activities that would qualify them for LSC grantees' services pursuant to § 1626.4. However, the lack of data on this population precluded ETA from developing a national number to estimate this population. As a result, the published estimates implicitly assume that **no** unauthorized farmworkers are eligible for LSC-funded services.

This implicit assumption is inconsistent with statutes that explicitly authorize representation of unauthorized individuals who have been subject to abuse, sexual assault, trafficking, or certain other crimes and both public and private data that demonstrate that significant numbers of farmworkers are subject to such crimes and therefore eligible for LSC-funded services based on the provisions of 45 CFR 1626.4. In response to these concerns, LSC has identified and assessed available sources regarding the extent of these crimes against farmworkers and developed a methodology to estimate the size of the farmworker population that would be eligible for LSC grantees' services based on the provisions of § 1626.4. *See Appendix A—Estimate of the Population of Agricultural Workers Eligible for LSC-Funded Services*

Pursuant to 45 CFR 1626.4—Anti-Abuse Law. LSC seeks feedback on the methodology and results produced by this methodology.

C. LSC will accept submission of available and reliable state- or region-specific estimates of the population of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions—LSC will accept such estimates only if they include the data and methodologies used, including authorship and other relevant information.

Some comments raised concerns about the source data and the methodology used by ETA. In particular, concerns were raised about the types of state groupings used for distribution of the estimated population among the states, leading to understatement of the number of LSC-eligible farmworkers in particular states. Specifically, comments stated that differences affecting agricultural workforces within a NAWS/NASS region produced inaccurate estimates for states within that region. Comments expressed the concern that states grouped together by geographic proximity did not share similarities in commodities or farmworker workforces. These comments also identified potential sources of more detailed estimates within specific states or regions.

LSC investigated the possibility of ETA's developing alternative estimates of the LSC-eligible population by reconfiguring the NAWS/NASS regions, but ETA determined that doing so is not feasible.

Although the NAWS/NASS regions produce the best available nationwide and regional population estimates, LSC understands that the NAWS/NASS regions might not account for unique, state-specific factors that could be relevant to delivery of these legal services in some states. Therefore, LSC requests submission of available and reliable state- or region-specific estimates of the population of agricultural workers eligible for LSC-funded services to augment the ETA estimates in individual states or regions. We underscore that the estimates must include both the source data (and data description) and a detailed summary of the research methodology employed to derive the estimates. The information should also identify all authors and any relevant citations or references to those estimates or to materials relied upon by those estimates. Please note that LSC uses the 100%-of-poverty threshold for population estimates. After the close of the comment period, LSC will publish on www.lsc.gov all actual, potentially reliable estimates submitted and related information. LSC will also publish a notice in the Federal Register regarding the availability of the estimates and providing a comment period.

Dated: February 1, 2016

Stefanie K. Davis

Assistant General Counsel

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