FLORIDA LEGAL SERVICES, INC.

Migrant Farmworker Justice Project

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April 20, 2015

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007

RE: Request for Comments
Agricultural Worker Population Data for Basic Field - Migrant Grants

Dear Mr. Freedman:

I am writing in response to the request for comments on agricultural worker population data for basic field-migrant grants, published in the *Federal Register* on February 2, 2015. The following comments are offered in my individual capacity and do not necessarily represent the views of Florida Legal Services, Inc.

My comments are based on my more than 35 years of experience providing free legal assistance in civil matters to low-income farmworkers. Much of this legal assistance was provided through entities funded with grants from the Legal Services Corporation. From 1979 through 1982, I worked as a staff attorney with Florida Rural Legal Services, Inc. In Immokalee, Florida, one of the largest concentrations of farmworkers in the eastern United States. From 1983 through 1988, I served as managing attorney of the farmworker division of Maryland's Legal Aid Bureau, where I was based in Salisbury, Maryland, on the state's Eastern Shore. Throughout that period, our project provided legal assistance to migrant workers in Maryland and Delaware; from 1985 through 1987, we also provided legal services to migrant farmworkers in Virginia under a subgrant from Peninsula Legal Aid Center. From 1989 through 1995, I again worked with Florida Rural Legal Services' migrant division, this time based in Belle Glade, the starting and ending point of the epic documentary *Harvest of Shame*. For the bulk of that time, I was the managing attorney of the FRLS migrant unit. Since 1996, I have been the managing attorney of the Migrant

Farmworker Justice Project, a division of Florida Legal Services, Inc. The MFJP, which receives no LSC funds, was created to provide representation to individuals who were ineligible for legal assistance from LSC-funded entities, as well as to engage in forms of legal assistance (lobbying and class action litigation, for example) which were off limits to LSC recipients as a result of restrictions imposed by Congress on LSC's annual appropriations.

Over the years, I have devoted considerable time to the issues on which comments are now sought. In the early and mid-1990's, I was a member of a committee of LSC migrant attorneys who helped oversee the adjustment of LSC's migrant population estimates from those derived in the late 1970's in the so-called Lillesand Report of 1977 to a new data set based on the work of researchers Alice Larson and Luis Plasencia. I was one of a handful of individuals from non-LSC programs who attended the meeting convened by then-LSC President John McKay in March, 2000 in Boerne, Texas to consider improvement of the delivery of legal assistance to migrant workers.

I recite this background only to emphasize that these issues are not new, and for decades have received intense and thoughtful attention from legal services programs serving migrant farmworkers, including programs that d not receive LSC funds. Reallocation of funds between program is inextricably related to service delivery questions. Throughout the past three decades, migrant advocates have grappled with issues of how to provide effective legal assistance to farmworkers scattered throughout the country. Based on decades of trying to serve farmworkers' legal needs through a system of state-based projects, it is clear that reallocation of funds alone will do little or nothing to ensure effective legal representation of these marginalized workers unless it is coupled with structural changes to the current legal services delivery model for migrant workers. The current system has perpetuated a large number of small grantees, most of which lack sufficient resources to provide legal assistance. Even in states with larger LSC migrant grants, lack of guidance and performance standards have allowed many programs to cease providing legal assistance on issues related to the farmworkers' occupational status. Instead, these programs have morphed into social service entities which largely limit their work to providing assistance with family-based immigration applications or income tax matters, with a substantial percentage of this assistance being provided to individuals who long ago ceased migrating and oftentimes have left agricultural work altogether.

Former LSC President McKay recognized these problems, but was unable to fully address them during his tenure. There has been little attention to these developments since McKay left LSC. My comments will be directed in large part to these service delivery matters, because I agree with the essential message that prompted LSC President to convene all of the migrant programs in Boerne: unless these service delivery deficiencies are addressed, migrant legal services programs in many parts of the country will be increasing irrelevant to the population they were designed to serve, as they already are in far too many states.

I. Continued need for specialized legal services for farmworkers.

For nearly four decades, LSC has provided funds for specialized legal services for representation of migrant farmworkers. This specialized funding was prompted by the unique barriers migrant farmworkers faced in receiving legal assistance. As discussed below, there remains a great need for legal assistance to many farmworkers. This is mainly because of he highly specialized nature of effective representation of farmworkers in status-related matters. But as a necessary corollary to this principle, LSC must insist that the legal assistance be limited to status-related issues. No grants intended for specialized farmworker legal services should be distributed to programs that have squandered farmworker funds on non-status issues or on non-farmworkers. Furthermore, in redefining the population to be served with farmworker funds, LSC should carefully weigh whether handling the status-related legal needs of many of the seasonal farmworkers added truly requires the sort of specialized knowledge needed for representing migrants. These considerations are of special importance, because the altered population has produced a radical redistribution of farmworker legal services funds away from the states in which the largest number of hand-harvest crop workers are employed. These crop workers have always been the core group served by migrant legal services, but the new definition greatly de-emphasizes their legal needs in favor of nonmigratory workers, many of whose legal needs differ substantially from those of the crop workers.

A. The principal barrier to access to the legal system that is unique to farmworkers is the specialized nature of the laws impacting their lives.

Special LSC funding to serve farmworkers has always been premised on the barriers these individuals faced in accessing the justice system. However, many of these barriers are shared by other low-wage, immigrant or rural individuals. The barrier that most clearly distinguishes farmworkers from other low-wage immigrant workers is the considerable body of law based on the occupational status of these workers. LSC should continue to provide specialized legal services to farmworkers because only in this way will these individuals receive effective representation on civil matters of great importance to them. As a corollary to this proposition, there is little justification for continuing to provide special funding to those programs that do not utilize these funds to assist farmworkers with status-related issues.

As the *Federal Register* notice observed, these problems were described in considerable detail in the so-called Section 1007(h) study, *Special Legal Problems and Problems of Access to Legal Services of Veterans, Migrant and Seasonal Farmworkers, Native Americans, People with Limited English-Speaking Ability, and Individuals in Sparsely Populated Areas.* With respect to farmworkers, the 1007(h) study identified the following principal barriers:

- Physical barriers to access (farmworkers' distance from legal services offices, farmworkers' lack of transportation, lack of access of legal services workers to employer-controlled labor camps);

- Farmworkers' lack of awareness of legal services resources;

- Farmworkers' need for legal assistance in languages other than English;

- Need for specialized knowledge and expertise for farmworkers to obtain assistance with status-related legal problems

These barriers remain in place today, especially with regard to migrant (as opposed to seasonal or year-round) agricultural workers.

In 1979, the 1007(h) found that overcoming physical access barriers was "the most critical problem in assuring access of migrants to legal services." *See* 1007(h) report, at 209. Over the past three decades, these physical access barriers have been reduced to some extent for several reasons.

First, a far smaller percentage of farmworkers reside in labor camps today than was the case in 1979. The 1007(h) report noted that "[i]n stream states, migrants reside in labor camps." *Id.* 209-10. However, nowadays few employers provide their migrant workers with housing . *Studies indicate that the number of farmworkers residing in employer-provided free housing dropped by 50% between 1984 and 2007. See* Villarejo, *The Status of Farm Labor Housing and the Health of Workers* (2015), at 4. Camp access issues, which were highlighted in the 1007(h) report as a major impediment to providing legal assistance to farmworkers is a much smaller problem today, with only about 12 percent of farmworkers residing in employer-provided facilities. *Id.*[1]
Second, technological advances have provided alternative means for contacting farmworkers. In 1979, labor camp residents rarely had access to telephone service; nowadays, a large percentage of farmworkers have cell phones with which they can communicate with legal services offices. A growing number of farmworkers actively use social media both to communicate and to obtain information.

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[1]An important exception to this trend is H-2A workers, who must, by law, be provided with free housing by their employers. Access to H-2A workers, many of whom work six- or seven-day workweek remains a major challenge in many areas of the country. This situation has been further complicated by the steady erosion of many of the legal precedents regarding labor camp access cited in the 1007(h) report. In the ensuing decades since 1979, there has been a paucity of legal decisions recognizing an affirmative right for legal service advocates to enter onto labor camp property to visit non-clients or to conduct generalized outreach and community education efforts.

While farmworkers may face fewer physical impediments to receiving legal assistance than in 1979, the remaining major barriers to service remain today. The changing demographics of the farmworker labor force has exacerbated several of these barriers.

The need to inform farmworkers of the availability of legal services is greater today than in the past. This is largely due to the increased turnover in the current farm labor workforce. In 1979, it was not uncommon for farmworkers to make agricultural labor a career, often following regular itineraries as they traveled from state to state. These workers were far more likely to learn of the availability of legal help through LSC-funded organizations than their counterparts today. A relatively small percentage of the current migrant workforce plans on a long-term career in farm labor. The agricultural workforce is characterized by constant turnover. The recent immigrants who comprise the majority of today's farm labor market generally view agricultural work as a transitional occupation until more regular or lucrative employment becomes available. No longer can LSC programs count on past outreach efforts to ensure that area farmworkers are informed of its services. To a greater extent than in 1979, continuous and repeated outreach is needed to alert the workforce of the availability of legal assistance.

Similarly, to a greater extent than in the past, farmworkers today need services in languages other than English. In 1979, a substantial proportion of the farm labor workforce was comprised on English speakers. For example, in 1977, the Lillesand study found that in most of the states in the East Coast "migrant stream," English-speaking African Americans comprised the majority of the migrant workforce. In addition, the farm labor workforce included sizeable numbers of English-speaking Caribbean guestworkers, Puerto Ricans and Mexican-Americans. The proportion of all of these groups in the farm labor workforce has dropped precipitously since 1979. Almost of all of these workers have been replaced in the farm labor market by individuals with little or no proficiency in English. A growing portion of the current farmworker population is comprised of migrants from southern Mexico or Central America who speak little Spanish and are fluent only in indigenous languages.

The 1007(h) report concluded that "[a]bility to handle the *status-related* problems of migrants requires specialized knowledge and training." *See* 1007(h) report, at 218 (emphasis added). Without doubt, this remains the situation today with regard to migrant farmworkers. The Migrant and Seasonal Agricultural Worker Protection Act (AWPA), adopted n 1982, is a considerably more complicated and nuanced statute than its predecessor statute, the Farm Labor Contractor Registration Act. The current regulatory scheme governing the temporary agricultural labor (H-2A) program is markedly more complex than the preceding regulations. LSC advocates are able to invoke on behalf of their farmworker clients a number of powerful federal statutes nowadays which were unavailable in 1979; with few exceptions, these statutes, such as RICO and the TVPRA, are not within the expertise of general legal services practitioners. And, despite the passage of over

three decades, farm laborers remain excluded from the protections of many of the integral employment laws at the federal and state level.

It is this need for specialized knowledge and training that is the most compelling reason for continued funding for farmworker legal services programs. While many other low-wage workers are immigrants who are generally unaware of legal services, these individuals' employment is to a great extent covered by the labor protective statutes that extend to most nonagricultural workers. For this reason, there are few if any statutes protecting these non-agricultural workers comparable to the AWPA.[2]

B. LSC should not continue allocating migrant funding to recipients that use migrant funds primarily to represent farmworkers on other than status-related mattres, or who use these funds to serve non-farmworkers.

The importance of this expertise and specialized training has major consequences for the issues in this rulemaking. First, as the 1007(h) report observed, specialized training is required principally with *status-based* issues, *i.e.*, those stemming from the individual's status as a farmworker. There is absolutely no basis for these ear-marked migrant services to involve any substantial amount of assistance with non-status issues,, such as family-based immigration or tax preparation. Unfortunately, as LSC has learned from recent program reviews, the legal assistance to farmworkers provided by a substantial number of LSC programs is limited to these non-status issues. *See, e.g.,* Office of Program Performance, *Final Program Quality Visit Report for Legal Aid Services of Oklahoma* (2013) at 19 ("all of the closed [migrant] cases involved divorces and other cases unrelated to the client's status as a farmworker."); Office of Program Performance, *Final Program Quality Visit Report for Southern Minnesota Regional Legal Services* (2013), at 21-22 (the vast majority of Minnesota and North Dakota cases handled by the program involved immigration matters; no employment cases initiated in the three years prior to the visit).

Unfortunately, the LSC has done little to redirect the efforts of these programs that have devoted their farmworker legal assistance efforts to non-status issues or, in the case of Oklahoma and other programs, have served non-farmworkers with resources earmarked for legal assistance to farmworkers. This is particularly disturbing because under LSC's new methodology, there will be substantial increases in the farmworker populations of many of the states served by these programs

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[2]Indeed, AWPA and its predecessor statute were adopted in large part because "practically none of the benefits of the protective measures of Federal law enjoyed by other workers are extended to migratory laborers." *See* 110 Cong.Rec. H19,896 (Aug. 17, 1964) (statement of Rep. Ryan, in support of passage of the AWPA's predecessor, the Farm Labor Contractor Registration Act).

who have avoided status-related cases (including the programs in Oklahoma and Minnesota). There is little justification for any farmworker funding in these states absent a sea change in the type of legal assistance provided in these states. Under the current service delivery models in these states, there is no basis for continued specialized funding for farmworker legal assistance. Unless LSC is prepared to compel the current recipients of migrant funds in these states to radically transform their current approach to farmworker representation, or award these funds to another recipient, there is no basis for continuing to fund specialized legal assistance for farmworkers in these states.

C. The population to be served with special farmworker funds should be those subject to laws requiring special training or expertise.

LSC should carefully consider its decision to broaden the definition of the population to be served with funds earmarked for specialized legal assistance to farmworkers. Inclusion of these workers probably contributed to "seasonal" agricultural workers, including livestock workers, contributed to the skew in the proposed distribution formula away from the states which are the largest users of hand-harvest labor in vegetables, fruit and horticultural commodities. The need for specialized legal services is markedly less for this population. Many of these seasonal workers are not considered agricultural workers for purposes of various employment laws. For example, processing and canning workers employed on operations that handle produce from multiple farms are not within the agricultural exemption to the Fair Labor Standards Act. In addition, local workers employed in packing, processing or canning operations are exempted from the AWPA. *See* 29 U.S.C. §1802(10)(a)(ii).[3]

[3]While the 1007(h) report included "seasonal" farmworkers, it did not discuss the legal problems of nonmigratory farm employees who worked year-round. *See* 1007(h) report, at 142 (defining seasonal farmworkers as those employed less than 250 days per year in field or food processing work, 1007(h)). The data relied on by LSC to enumerate the seasonal farmworker population do not distinguish year-round agricultural employees from those considered to be "seasonal" in the 1007(h) study and whose agricultural work is sporadic and truly seasonal in nature.

II. Continued special funding for farmworker legal services must be conditioned on providing effective representation on status-related issues.

The current configuration of LSC migrant funding remains largely unchanged since the mid-1980's, when LSC began funding migrant projects in almost every state, rather than consolidating the smaller states' grants into a single grant administered by the Migrant Legal Action Program. While creating migrant programs at the state level was intended to ensure migrant workers had access to effective legal representation regardless of where they traveled, this effort has, by and large, been a failure. With but a few notable exceptions, the smaller LSC migrant grantees, those with funds sufficient to fund only an advocate or two, have been unable to provide effective legal representation to farmworkers over a sustained period of time.

The proposed funding formula for migrant grants in theory should result in markedly increased legal assistance for migrant programs in a number of states presently receiving small migrant grants. There is little reason to believe that any increases in this regard will result in high quality legal assistance to farmworkers, given the sorry record of these programs in using their current grants. Indeed, unless LSC implements major structural changes, the end result of the current effort may be a net weakening of the migrant legal services delivery system. Funds will be shifted away from states with large populations of farmworkers employed in the cultivation and harvest of vegetables, fruit or horticultural commodities. To a large extent, the proposed distribution programs redirects these funds to programs which have largely failed to effectively use their migrant grants over the years. It makes no sense whatsoever to redistribute LSC migrant funds without at the same time addressing the ineffectiveness of small migrant programs.

It is well past time for LSC to stop funding migrant projects with one or two advocates. For over 20 years, LSC has largely sat idle while the vast majority of small state programs proved unable to provide high quality legal assistance to farmworkers over a sustained period. This is not so much a function of the individual advocates involved, but the result of the extreme limitations the current service delivery model places on advocates in these states with small migrant projects.

In 1994, a number of LSC migrant programs prepared a report identifying the structural problems that all but guaranteed that small state programs will prove ineffective. When LSC President John McKay convened a conference on migrant legal services delivery in Boerne, Texas in March, 2000, the report was updated (see attached). This thoughtful and comprehensive report listed in considerable detail the shortcomings of small migrant legal services programs and recommended several models to address these structural deficiencies.[4] It was anticipated that this report would

[4]My personal experiences reinforce this sentiment. For part of my tenure with Maryland's Legal Aid Bureau, we were able to consolidate the LSC migrant grants for the three Delmarva states

serve as the focus for a communal effort at Boerne to reconfigure the LSC migrant legal services delivery system to better serve farmworkers.

Unfortunately, the Boerne conference resulted in only modest changes in the migrant legal services delivery system. This was largely due to a strong push-back from the Midwestern states with relatively small migrant projects. These programs refused to engage in meaningful discussions regarding reconfiguration, dooming McKay's efforts to arrive at a consensus. Instead, these small state programs persuaded McKay to provide them with an opportunity to upgrade and strengthen their migrant programs, rather than face consolidation. Despite his considerable misgivings, President McKay eventually acceded to the request by the small states, leaving little changed following the Boerne conference. The one exception of note was when six southeastern states voluntarily consolidated their grants, leading to the creation of Southern Migrant Legal Services, a project of Texas RioGrande Legal Aid. SMLS has had great success since its creation. It has consistently provide high quality legal assistance on status-related issues to farmworkers in six states which had received little service in prior years. SMLS should serve as a model for establishing sustainable migrant legal services programs in states with relatively small migrant grants.

The 14 years since Boerne have confirmed the concerns expressed about small migrant programs. Most of the Midwest programs that led the effort at Boerne to scuttle President McKay's consolidation efforts have continued to underperform. There is almost a complete lack of meaningful status-related work in many of these programs. More importantly, there is no indication that an increase in the size of the migrant grant would markedly improve their representation of farmworkers — essentially it would likely prove a case of pouring good money after bad.

The current redistirbution offers an ideal opportunity for LSC to fix the small migrant problem that has festered for decades and ultimately confounded LSC President McKay. Failure to address this problem along the lines suggested in the attached paper will only perpetuate and likely exacrebate the current situation, where a large (and under the proposed distribution formula, increasing) share of the LSC migrant funds are allotted to programs that have demonstrated over the years a disinterest in using these funds to provide assistance with legal assistance on status-related issues.

(Delaware, Maryland and Virginia). This allowed us to create a staff of five advocates, which in turn permitted us to undertake more complex and challenging litigation on behalf of clients employed in the three states. Unfortunately, in 1988, in response to pressure from some Virginia state legislators, Peninsula Legal Aid Center ceased subgranting its migrant funds. For most of the period since then, Virginia has had a single LSC-funded migrant advocate, with all the attendant problems associated with one-attorney projects.

III. Final thoughts.

Like many of my colleagues, I was greatly surprised at the proposed distribution of LSC migrant funds under the proposed methodology. Others have scrutinized the methodology to uncover the reasons that funds are redirected away from the states with the largest fruit and vegetable production to states with relatively small numbers of crop workers; I defer to their work to uncover the glitches that have led to this result. However, something is seriously amiss with any formula that makes Iowa seventh largest recipient of farmworker legal services funds, and leaves California, home to nearly half of America's fruit and vegetable workers, with only about 20% of these moneys. The various federal programs designed to serve migrant workers without exception were enacted with fruit and vegetable workers in mind as the primary beneficiaries. The various laws that are the backbone of the litigation practices of those farmworker legal services that focus on status-related issues — the AWPA, the H-2A regulations, OSHA's field sanitation regulations, EPA's worker protection standards — all resulted from Congressional and agency focus on fruit and vegetable workers. Because expertise in these often arcane laws is the primary basis for specialized farmworker funding, it seems anomalous to extend this funding with a distribution formula that significantly reduces the funds to those states in which most of the fruits and vegetables are produced, harvested and packed. For 40 years, LSC has earmarked money to address the special legal needs of these fruit and vegetable workers. It would be a grave mistake for LSC to embrace any distribution formula that de-emphasizes these fruit and vegetable workers at the expense of livestock workers and non-migrant hired hands, many of whom are employed year-round in agriculture.

Thank you for the opportunity to comment on these important matters.

Sincerely,

Gregory S. Schell
Managing Attorney

SMALL MIGRANT PROGRAMS: RECOMMENDED RESPONSES TO THE CHALLENGES

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SMALL MIGRANT LEGAL SERVICES PROGRAMS: RECOMMENDED RESPONSES TO THE CHALLENGES

I. INTRODUCTION

In late 1994, the Migrant Delivery Working Group[1] produced a policy paper entitled "Small Migrant Legal Services Programs: The Difficulties and Some Recommended Solutions". In 1999, a sub-committee of the Farmworker Project Group was assigned the task of revising this policy paper.[2] This revised paper incorporates much of the work of the 1994 paper. It also reflects the subcommittee's close reconsideration of the 1994 paper in light of the changes since then, and presents recommendations the subcommittee felt were appropriate responses to the challenges of migrant legal services delivery for the future.

The Farmworker Project Group Steering Committee reviewed this paper in November of 1999. After a lengthy discussion during two conference calls, the Steering Committee requested the subcommittee to make two changes to this paper in early December of 1999.[3] Those changes would, essentially, lower the threshold for the definition of a "small" or "sub-critical mass" program from that proposed by the subcommittee and, as a result, exempt more programs from exploring the subcommittee's delivery system options. The subcommittee reconvened to discuss the Steering Committee's action. The subcommittee was deeply divided about whether to accept the changes requested by the Steering Committee. The chair proposed, and the subcommittee accepted, that this paper be revised to reflect the history of the discussion

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[1] A committee appointed by the Farmworker Project Group to study and produce position papers on various issues related to delivery of legal services to migrant farmworkers. At the time the Farmworker Project Group was a group of all programs which received migrant LSC funding. The FPG is governed by a Steering Committee, elected by migrant staff in those programs. Since 1996, the FPG has included non-LSC funded programs and some of the members of the current Steering Committee are employees of non-LSC funded programs.

[2] The "Small States" sub-committee consisted of Eric Nelson of Bangor, Maine; Bob Lyman of Minneapolis, Minnesota; Olga Pedroza of Las Cruces, New Mexico; Bill Francisco of Johnson City, Tennessee; Shelley Latin of Charlottesville, Virginia; Greg Schell of Belle Glade, Florida; Roger Rosenthal of Washington, D.C.; Bill Beardall of Austin, Texas; and was chaired by Mary Lee Hall of Raleigh, North Carolina.

[3] The Steering Committee is composed of nine member: five regional representatives, three at-large representatives, and one representative of the Minority Caucus. At the time of the vote, five members of the Steering Committee were on the conference call, and the vote was 3-2. Two of the seats on the Steering Committee are currently vacant. The only subcommittee member who is also a Steering Committee member is Greg Schell.

thus far with both the subcommittee's and the Steering Committee's positions , and that the paper be sent, as called for in the process section (Section VI, page 39), to the all migrant program directors so that a fuller discussion could begin immediately.

A. DEFINING THE ISSUE

In 1994, the Migrant Delivery Working Group wrote:

> There is a general consensus among long-time observers of migrant legal services that one of the most serious shortcomings in our delivery system is the fact that a large number of migrant legal services programs are operating on grants which are too small for the task. The heart of the problem is this: regardless of the number of migrant clients to be served, there is a **minimum critical mass of personnel and resources** which is necessary in order to be able **to provide high quality, specialized legal assistance to migrants** and **to ensure that this level of assistance is sustained** without interruption over a period of decades.

The subcommittee reaffirms that the issue of "critical mass" is still the central issue to be addressed in responding to the dilemma posed by small migrant Legal Services Corporation (LSC) grants. Twenty years of experience[4] have taught us, again and again, the importance of a critical mass of staff and resources devoted to migrant farmworker advocacy. Our challenge now is how to configure LSC migrant delivery in a way that maximizes limited resources and that sustains the provision of high quality, specialized assistance to migrant farmworkers. In addition, it is critical that this assistance is available to all migrant farmworkers and that the full panoply of advocacy tools is available to their advocates.

B. QUESTIONS ADDRESSED

In this paper, we address four questions which follow from the central "critical mass" issue:

1) What is the "critical mass" of resources needed for high quality, effective, and sustained migrant farmworker advocacy?
2) What are the problems associated with a lack of "critical mass"?
3) What are recommended solutions to the problems?
4) What process should be used to implement recommended solutions?

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[4] Most migrant programs were initially funded by LSC in 1978 or 1979.

Before addressing those issues, we review some of the major changes in both legal services delivery and the farm labor workforce since 1994.

II. CHANGES SINCE THIS ISSUE WAS LAST REVIEWED

A. DELIVERY SYSTEM CHANGES

Many features in the landscape of migrant legal services delivery have changed in the last five years. The chief changes have been:

1. The 1996 LSC Restrictions

The 1996 restrictions prevent programs receiving LSC funds from, among other things, representing aliens other than those in the limited classes specified in the LSC regulations, participating in class actions, and including attorneys' fees requests as a part of a prayer for relief in litigation. The pre-1996 LSC restrictions on legislative and administrative advocacy were also strengthened in 1996.

2. The Growth of Non-LSC-funded Migrant Legal Services Programs

Although none of the programs is as large as the pre-1996 LSC-funded migrant legal services program in the state, at least ten states have migrant legal advocacy programs, which are not bound by the LSC restrictions.[5] The funding sources of many of these programs, however, have some other restrictions.

3. The Loss of LSC Funds

In 1996, Legal Services Corporation funding was cut substantially. In that year, LSC also completely phased in the results of the Larson/Plascencia estimate of migrant farmworkers in its earmarked migrant grants. As a result, most LSC migrant programs lost funding, and many programs saw a sharp decline in their LSC funds. Of fifty 1999 LSC migrant delivery grants, eleven are less than $25,000 annually, eighteen are less than $50,000, and thirty are less than $100,000.[6] In many of the states in which a non-LSC program was started, the LSC-funded program also ceded all of its non-LSC funding to the new non-LSC program.

4. Tremendous Growth in the Use of Technology.

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[5] In the fall of 1999, when this paper was prepared, California, Florida, Washington, Michigan, Oregon, North Carolina, New York, Pennsylvania, Virginia, and Ohio had non-LSC funded programs or components of non-LSC funded programs with at least one full-time advocate dedicated to serving migrant farmworkers.

[6] A spreadsheet is attached to this paper reflecting the various resources each recipient of LSC migrant funds reported to LSC for its migrant legal services delivery effort in 1999.

In 1994, Handsnet was the dominant electronic method by which non-profits communicated. Most programs had, at most, one computer with access to Handsnet. Five years later, many legal services programs have Websites, and most legal services advocates can reach the Worldwide Web from their desktops. Electronic mail and listserves have greatly expanded the ability of migrant legal services advocates to communicate and share information cheaply and quickly across long distances.

5. Substantial Reduction of National Support Capacity for Migrants

In 1996, the LSC-funded migrant legal services national support center, the Migrant Legal Action Program (MLAP), like all other LSC-funded national support centers, lost all of its LSC funding. Prior to 1996, MLAP employed four full-time attorneys and one part-time attorney to assist migrant legal services advocates with substantive research, development of critical materials, training support, advice, and even co-counseling. Today, MLAP has only one full-time attorney and two contract attorneys. Given this staff composition, MLAP's ability to provide assistance has been seriously diminished. MLAP's services are generally no longer free to migrant legal services programs. The national newsletter, the Field Memo, is sold by subscription, and programs must pay an hourly rate for most support services. Since MLAP lost LSC funding, the migrant legal services community has not had a national substantive training on all issues relevant for farmworker practice[7]. At the same time, the Farmworker Justice Fund (FJF), a non-LSC-funded national farmworker advocacy organization which was started in the '80's in response to the first lobbying restrictions and performed some training and litigation support functions, also lost funding. In 1995, FJF employed three lawyers and an occupational safety and health specialist. Today, FJF employs two lawyers who work extensively on national policy, focusing on the temporary foreign agricultural worker (H-2A) program and occupational safety and health issues.

6. The LSC State Planning Process.

In 1994, LSC issued the first of several directives regarding state planning to all programs within states. It was clear from the start that LSC was concerned about very

[7] Texas Rural Legal Aid has sponsored an annual training on basic farmworker employment law and invites staff from other programs to attend, but these trainings are designed for new to intermediate staff. Before MLAP lost LSC funding, a national conference was held every 3-5 years for all staff, inexperienced to

small (basic field) programs and urged consolidation of small programs into larger programs. As the restrictions first appeared in Congress in 1995 and were enacted, LSC continued to urge state planning to maximize the efficient use of resources and, to the extent possible, to carry on the training functions previously performed by state support centers. In February of 1998, LSC issued its latest planning letter in which states were required to send reports on the state planning processes to LSC by October 1,1998. LSC has approved some state plans and rejected others. In most state plans, migrant farmworkers were mentioned only briefly, if at all. This omission reflects three facts. First, in most states without a substantial migrant program, migrant farmworker advocacy staff are paralegals, staff attorneys, and managing attorneys , not the higher level LSC program managers who participated in the state planning process. Second, migrant programs, as providers of services to a special client population, have limited interface with basic field providers in the state, usually on specific issue-driven matters. The primary peer community for migrant farmworker advocates is other migrant farmworker advocates nationally. Third, migrant programs, whatever their size, are and always have been statewide programs.

However, the principles that LSC enunciated in its state planning directives are relevant to a discussion of small migrant grants and reflect principles that LSC is likely to consider in any reconfiguration of migrant grants. The vast majority of migrant grants are now quite small, much smaller than the basic field grants that initially spurred LSC's concern. In the February 12, 1998 letter, LSC highlighted that its decision to fund programs in North Carolina for only one year, and programs in New York, New Jersey, Pennsylvania, and Virginia for only two years instead of three, was based upon a need for those states to "develop further their plans for a comprehensive, integrated statewide delivery system" and out of a concern that "the number of LSC funded programs in these states may not constitute the most economical and effective configuration for delivering legal services to the low income community". In the February 12 letter, LSC also instructed programs how state planning for a "comprehensive, integrated statewide delivery system" should be viewed:

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experienced. TRLA and FJF jointly sponsored a training on H2A issues in 1998, but no organization has sufficient resources to replicate this training as the H2A workforce increases nationally.

> Recipients must also examine how the present configuration of programs, and specifically the number of programs, impacts upon the overall effectiveness of the state delivery system. In this regard, it is especially important that each participant look at client services, not from the view of just one city or one county, or one program, but from a statewide perspective.

LSC has required the statewide planning process to address seven questions, which center in the following areas: 1) intake and delivery of advice and referral services; 2) technology; 3) community education and self-help; 4) staff and pro bono attorney training and backup; 5) private attorney involvement; 6) preserving and expanding financial resources for legal services to low-income persons; and 7) "Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?"

The important issues raised in the state planning process need to be addressed on behalf of the migrant legal services community. Native American interests were also slighted in most states' planning processes. Like the Native American provider community, the subcommittee believes that planning for the migrant client population should be done nationally, by the national migrant legal services community, and, in addition, that migrant providers' participation in the state planning process should also be enhanced.[8]

B. FARM LABOR WORKFORCE CHANGES

In addition, the intervening five years since the Working Group's paper have made more apparent some patterns of change in the farm labor workforce.

Many farmworkers gained permanent residence status through the "SAW" provisions of the Immigration Reform and Control Act of 1986. Since then, a series of immigration-related laws, including IMMACT '90 and the Immigration Reform Act of 1996, have restricted the ability of those workers to assist other family members to adjust

[8] Many of the questions are more appropriately answered from the national perspective, to ensure that, for example, training and backup are available to all migrant advocates, but some questions, such as, for example, technology or expanding resources also require participation in the state process, to ensure that the state process includes the needs of the migrant advocates and their clients, while there may also be a national or regional response to such questions.

their status. As a result, many workers go back and forth between Mexico and the United States, spending several months each winter in central Mexico with their families and the rest of the year working in the United States. In effect, Mexico has become a "base state" for farmworker clients who are eligible for LSC programs' services. Until and unless Congress makes family-based immigration easier and more affordable, the migrant farm labor force for the foreseeable future will include many lawful permanent residents who spend a portion of each year in Mexico with their families, rather than settling in the traditional base states of California, Texas, or Florida.

Adding to the growing transnational nature of the workforce is a substantial growth in the use of the H-2A program by agricultural employers in many different states. For more than 40 years, the largest number of H-2A workers were employed by Florida's sugarcane industry. By the mid-1990's the leading H-2A state became North Carolina, and aggressive marketing of the program by the North Carolina H-2A contractors spread its use to many other states. With lax DOL enforcement and inadequate requirements for testing the labor market, continued growth of the use of H-2A workers appears inevitable. In addition, the use of H-2B workers in industries that have typically employed migrant farmworkers, such as reforestation and tobacco warehouses, has mushroomed. H-2B workers, although frequently the same individuals as H-2A workers, are not among the limited classes of aliens LSC-funded programs can represent. Prior to 1996, several migrant legal services programs represented H-2B workers with non-LSC funds; in 1996, representation of these workers fell to the fledgling non-LSC programs.

Another pattern which has clearly emerged in the last five years is the increasing use of migrant workers in other agriculture-related industries, particularly meat and poultry processing. Migrant legal services programs across the country have observed that the exploitative practices so long deplored in agriculture have spread to these and other industries in search of low-wage workers. Often former migrant farmworkers have been lured far from their homes because of false promises by labor contractors, provided unsafe and substandard housing by their employers, been paid less than minimum wage because of illegal deductions or low piece rates and been left stranded far from home in these low wage industries. Migrant legal services providers have found that often they

were the only legal services advocates with the substantive and client community experience to respond to this need.

Finally, the farm labor workforce in the United States has continued to grow as the demand for fresh produce has increased and American agriculture tries to compete with growing foreign markets and as the horticultural industry has grown. (The horticultural industry is employing an ever-increasing number of migrant farmworkers.) In some states, migrant nursery workers now work a substantially longer season than the migrant workers who formerly labored in the fields in the state. Increasingly, H-2A applications are made for nursery workers.

III. DEFINING "CRITICAL MASS"

How large must a migrant legal services program be to achieve critical mass? Or, conversely, how small is too small? To some extent the answer to this question is a matter of degree: the smaller the grant, the greater are the difficulties associated with small grants. However, there does seem to be a fairly distinct point below which these difficulties do become extraordinarily acute. This point has usually been measured in terms of staff size. The 1007(h) Study[9] determined that the minimum viable migrant grant was one sufficient to support a "two attorney unit" (i.e. two full time migrant attorneys with supporting operating resources and paralegal and clerical staff). In discussions held by the Farmworker Project Group in Albuquerque in November 1993, the working hypothesis was that a program needs a minimum complement of two full-time attorneys, one full-time paralegal and one full-time clerical staffer.[10]

A. THE SUBCOMMITTEE'S RECOMMENDATION

This subcommittee believes that a more appropriate size unit, one which will effectively meet the challenges of turnover, training, and expertise, is a minimum of 6 full-time advocates (attorneys and/or paralegals) or their full-time equivalents[11], with a minimum of 3 full-time lawyers, and adequate support staff (equivalent of 1 or 2 full-time support staff). When staff levels fall below this critical mass, the kinds of

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[9] The 1007(h) Study is LSC's original policy analysis concerning migrant legal services needs. It was done by LSC in 1977 and established both the rationale for funding specialized migrant legal services programs and the basic delivery structure we still utilize today.

[10] Other configurations were discussed as well, including the view of a number of the most experienced programs that a minimum effective unit is two attorneys/two paralegals/one clerical.

difficulties cited in the next section tend to overwhelm the program's ability to initiate and sustain effective delivery. The subcommittee is aware that many small migrant programs currently use attorneys who are part-time migrant and part-time basic field. For the reasons discussed in the following section, this is not usually desirable.[12]

How does this critical staff size translate into dollars? While the costs vary from program to program, based upon salary scales, benefits packages, and various non-personnel expenses, including litigation costs, migrant farmworker units with the aforementioned six advocates and adequate support range in cost from $440,000 to $530,000.[13]

It is not that migrant programs smaller than this are never effective. Indeed there are a few notable examples of very small programs which have been quite effective, at least for a period of time. However, they are the exception which proves the general rule. Our experience over the last twenty years has shown that the odds are greatly against such small programs being able to get a strong program started and keep it strong permanently. Nor should the observations in this paper be construed as a criticism of the staff of small migrant programs. Small program staff work hard and do the best they can within their resource limits. However, our experience of two decades indicates that when a program is unable to afford the critical staff size, it is far less likely that (even with hard work) it will be able to overcome its resource limitations and establish a strong, specialized migrant program which can stay strong indefinitely.

The subcommittee recognizes that of the current migrant single-state grantees, only five (California, Texas, Florida, Washington, and Michigan), receive over $500,000 in LSC funds and only two others (Oregon and North Carolina) receive more than $400,000. Even when all funding sources are taken into account, to the subcommittee's knowledge, only one other LSC-funded program, the Minnesota-North Dakota program,

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[11] The subcommittee noted that for areas with short seasons, a program may need a large number of outreach workers or paralegals during the season, but need fewer year-round paralegals.

[12] A different situation is presented by attorneys who desire to work part-time (i.e. 3 days a week or ½ time) These attorneys may provide a program with expertise and special skills and flexibility in these arrangements is encouraged.

[13] Texas Rural Legal Aid's cost for a four attorney unit averages $440,000; the Minnesota-North Dakota program's four lawyer unit has a 1999 budget of $495,000; Legal Services of North Carolina's three attorney, three paralegal, two support staff Farmworker Unit is projected to cost $530,000 in 2000. Both the Minnesota/North Dakota and North Carolina programs also hire additional seasonal paralegal/outreach staff.

has annual resources in excess of $400,000.[14] Therefore, the implications of this definition are far ranging.

The history of this issue within the migrant legal services community demonstrates the necessity of making a decision based upon principle and upon easily verified objective criteria, such as staffing levels and total funding. In 1977-78, the 1007(h) Study and the resulting LSC funding policy pegged the minimum viable migrant grant at $70,000–the amount needed to staff a two attorney unit in 1977-78.[15] Taking inflation into account, the equivalent of $70,000 at the time of the Albuquerque discussions was about $175,000,[16] which was also consistent with contemporary cost estimates of the funding required to operate an effective two attorney migrant program.[17] But in the Albuquerque discussions, the community shrunk from the implications of using a $175,000 benchmark and instead spoke in terms of a $100,000 critical threshold without justifying that particular number. Following the Albuquerque meeting, there was an attempt to urge migrant programs with grants under $150,000 to consider voluntary measures to overcome the small grant difficulties (e.g. regionalization, partnerships with larger programs, subsidies from basic field, etc.), though nothing much came of this attempt. At the 1994 meeting at which the predecessor to this paper was presented, the community was even unable to make a recommendation to eliminate the very bottom tier of grants below $10,000.

In 1999, with more small programs than ever and many other challenges, the time has come to make tough decisions based upon principles which will surely result in stronger migrant advocacy, even if those decisions may change the delivery system as we

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[14] In 1998, Ohio also had funding in excess of $400,000, but the majority of these funds now go to the non-LSC funded migrant progam.

[15] This resulted in a decision by LSC not to fund any migrant program in a state where the grant would fall below $70,000, unless the program could supplement the grant up to the $70,000 minimum out of its basic field or other funds. Grants were not made under any circumstances in states where the migrant grant would fall below $25,000. The money which otherwise would have gone to these sub-critical mass states was instead placed in a Small States Advocacy Fund administered by MLAP to provide technical assistance, training, consultation, and litigation expenses in connection with service to migrants in those states. In 1981, the out-going LSC abolished the Small States Advocacy Fund and gave out annualized migrant grants to every state. This is how we came to have sub-critical grants today.

[16] Based on the Consumer Price Index as the measure of inflation.

[17] E.g.: Full-time attorney salary (3-4 yrs experience) = $36,000 + 23% fringe benefits x 2 attorneys = $88,560; Paralegal salary (6 yrs experience) = $20,000 + 23% fringe benefits = $24,600; Full-time secy/administrative asst: (6 yrs experience) = $20,000 + 23% fringe benefits = $24,600; Total non-personal

know it. Indeed, because of the changes enumerated above, the system has already changed markedly and the issue us is whether we can effect **positive** changes to a migrant delivery system vastly different from that which LSC launched in 1978. While not all subcommittee members had the experience of working in a six-advocate migrant program, many of the problems associated with less than this critical mass, as enumerated below, were experienced by all of those in smaller programs, and subcommittee members in larger programs had generally been able to avoid those pitfalls.

B. THE STEERING COMMITTEE'S POSITION

After a lengthy discussion, three of the five Steering Committee members in attendance felt that the six full-time or full-time-equivalent advocate minimum should be an aspirational goal and the 1007(h) two lawyer unit (including a full time paralegal and a support person) should be the minimum. The 1007(h) unit cost in 1999 dollars would be approximately $200,000. The 1007(h) minimum access unit size was, in fact, used by LSC, as a criteria for releasing migrant funding to programs with resources below that 1977 dollar amount ($70,000) until 1981, when all migrant grants were annualized. Until that time, programs in states with migrant grants which could not support a two lawyer unit (with paralegal and support) were either required to bring the total resources up to the 1007(h) amount or to go through the "Small States Advocacy Fund" administered by MLAP to secure funding for special migrant advocacy. In those years, LSC also encouraged the creation of multi-state programs to bring a grant up to minimum access.

Before the Steering Committee considered the paper, a draft version was circulated to the LSC migrant program directors in the Midwest, who met in November and discussed the paper. Among the Midwestern migrant program directors, there was widespread dissent from the draft of this paper.

One fundamental point raised by some of the Midwest directors was the perceived necessity for an "opt-out" provision: a procedure by which programs with less than critical mass could show that the program was doing a maximally effective job and should be allowed to retain the status quo below critical mass. The subcommittee had earlier considered such a provision and had rejected it for two reasons. First, the

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costs (litigation; training; travel; telephone; office, etc.) =28% of personnel costs = $38,573. Total = $176,333.

competitive bidding framework offers a de facto "opt-out" provision without creating another process for LSC to do a quality review of migrant programs. The subcommittee concluded it was unrealistic to expect LSC to devote the resources that would be needed to do an in-depth qualitative review of each state's migrant delivery system. Second, the subcommittee felt that the factors that demonstrated that a subcritical mass program was maximizing resources should be more properly used to determine the appropriate partnerships for small states and that available energy should first be directed to establishing these partnerships to improve programs rather than defending the status quo. [The factors the subcommittee felt were most important are enumerated on page XX].

The Steering Committee concurred that competitive bidding offered a de facto "opt-out" process, but felt that the 1007(h) minimum access unit was a more appropriate size for "critical mass".

The Steering Committee also voted that both LSC and non-LSC staff should be counted for purposes of determining "critical mass'. [18] The subcommittee had considered this issue in its earlier deliberations. After listening to input from Ohio on the first Steering Committee call at which this paper was discussed, some subcommittee members were willing to consider LSC and non-LSC resources jointly meeting the six full time advocate minimum critical mass, because they were convinced to do otherwise would be to place obstacles in the path of the development of non-LSC migrant legal services programs. Some members discussed, but the subcommittee did not decide, that perhaps resources should be considered jointly where the LSC migrant entity can demonstrate that there is, in fact, an integrated migrant delivery system with the LSC and the non-LSC providers which addresses the pertinent factors required in the state planning process within the migrant context. When the subcommittee reconvened following the second Steering Committee call, however, the subcommittee unanimously felt that allowing LSC and non LSC resources to meet a 1007(h) level "critical mass" was unwise.

[18] This point was discussed, in the Steering Committee conference call, prior to the decision to reduce the subcommittee's six full time advocate critical mass criteria to the 1007(h) three full time advocate critical mass criteria. It is not entirely clear that the Steering Committee would disagree with the subcommittee that such staffing levels split between two programs render

IV. THE DIFFICULTIES CAUSED BY HAVING LESS THAN CRITICAL MASS IN A MIGRANT LEGAL SERVICES PROGRAM

A. DIFFICULTIES FOR ALL SMALL MIGRANT LEGAL SERVICES PROGRAMS

The following is a list of some of the ways in which having less than a critical mass in staff and resources often has a seriously detrimental effect on the long term effectiveness of a migrant legal services program. It is an effort to identify some of the special difficulties that affect these smaller programs in order to better evaluate possible solutions, not a criticism of any particular small program nor a description that is universally true of all small programs.

One of the issues with which the subcommittee struggled was the line between institutions and individuals. Some quite small programs, because of the work of talented and committed staff, have achieved dramatic results for farmworker clients. None of these achievements happened in a vacuum. The parent basic field programs in these situations were unusually supportive, with resources and moral support; most of the staff involved had previous experience in a migrant program or, at a minimum were experienced attorneys. Other talented and committed staff in small migrant programs have struggled mightily in less than hospitable parent basic field programs and achieved far less positive results. In many other situations, well-motivated but inexperienced staff have been left to flounder in basic field programs where they were treated with benign neglect.

The following difficulties are not *intentionally* caused by individuals, certainly not by migrant advocates or by well-meaning program directors or management staff. These difficulties are the *result* of the institutional pressures experienced by programs with less than a critical mass. Even in small programs where there has been a level of success, some of these difficulties exist or will exist as soon as current staff leave.

1. Insufficient experience, training, and in-house expertise:

It is unusual for a sub-critical mass program to be able to hire an attorney who already has both experience and expertise in representing migrants. Normally newly hired staff are new to the practice of law or at least to the specialized practice of migrant law. Training conferences put on by larger migrant programs are very helpful in giving new staff an introduction or a re-orientation to the substantive law needed for migrant

advocacy Co-counseling with experienced migrant advocates from other migrant programs can help staff in small programs put substantive knowledge into practice and teach some practical skills. But, as helpful as these mechanisms are, they cannot substitute for the most vital training for migrant legal services advocates, which is:

a) day-to-day mentoring by senior colleagues;

b) working as co-counsel with experienced migrant counsel; and

c) senior staff passing on that program's accumulated institutional knowledge of such things as: (i) local farm labor markets including the particular employers, workers, employment practices, legal issues, etc.; (ii) local farm labor law practice, including the farm labor defense bar, courts and judges, and the governmental and non-governmental agencies which deal with migrants; and (iii) proven techniques for conducting outreach, selecting cases, carrying out representation and maintaining attorney-client relationships with a clientele which is mobile and otherwise hard to reach and serve. .

With hard work, planning, and commitment, migrant projects, with three or more attorneys can acquire and sustain these resources which foster development of experience and expertise year in and year out. It is rare, however, for a program with fewer staff to be able to do this. It is obviously impossible for a program with only one staff person to sustain expertise when that staff person leaves. Moreover, this experience-training-expertise component cannot normally be provided by the migrant project's parent basic field program. The basic field program may have good experienced practitioners and be able to provide some guidance, but for the most part the basic field staff does not deal with the same substantive issues (and sometimes not even the same procedural issues), nor with the same client and opponents, and frequently not with the same agencies, courts, or representation techniques.

2. Lack of camaraderie and a shared sense of common mission:

Many migrant advocates feel that a key element in maintaining a strong migrant program is the camaraderie and sense of common mission which arises when several lawyers work together on specialized farmworker cases and legal issues, when they struggle together against the same obstacles, and when they share the task of formulating

and achieving a common objective. However, this camaraderie is very hard to maintain in small programs and especially difficult in subcritical mass programs, where there are few, if any, other migrant colleagues with whom to share the practice. Although exceptional less experienced attorneys who are isolated in small migrant programs may do a creditable job relying on support from experienced lawyers in other migrant programs, these attorneys could develop their skills, capacities, and commitment to serving migrant clients more fully if they were within a program where the less experienced lawyer could expect to share in the mission.

3. Difficulty maintaining a specialized migrant practice distinct from the basic field practice:

When migrant projects fall below critical mass, there is a strong tendency for the migrant staff to mostly take on the same practice as the basic field program, rather than maintain the essential specialized migrant focus. While some exceptional advocates in small migrant programs have not succumbed to this tendency, they have usually done so at personal and professional cost.

Often there is formal pressure from the basic field program on the migrant staff to share in the basic field caseload. When funding is less than what the parent program believes can support a full-time lawyer, handling other cases is expected. Compared to a basic field practice, a migrant practice normally involves lower caseloads, more complex and expensive cases, more time spent on outreach and maintaining client contact, handling more bilingual and bicultural issues, and more travel. Often it takes a full season or two of outreach to begin to develop a full migrant caseload. The parent basic field program, perennially short-handed and struggling with overwhelming caseloads, often sees its migrant staff as not carrying a sufficient share of the program's overall caseload and so it diverts the migrant staff off into handling part of the basic field caseload.

There are additional informal pressures, which make this problem especially acute in a subcritical mass migrant program. The inexperienced and isolated migrant staff is often unsure how to develop and maintain a migrant practice. Their only role models are the basic field staff with their basic field practice. Their mentors are senior basic field staff whose knowledge and expertise are focused on basic field type cases. The

opportunities to develop relationships within the program center mainly on the basic field caseload, which is the focus of everyone else around them. The isolated migrant staff may be further deterred from pursuing a specialized migrant mission because the migrant practice is more unconventional and frequently more controversial than the practice of their basic field colleagues. The combination of these formal and informal pressures make it particularly hard for smaller migrant programs to retain their specialized migrant focus.

Some of the smaller migrant programs, lacking the resources to support full-time migrant staff, have tried to cope by designating an attorney or paralegal as part-time migrant/part-time basic field. Where this has worked, success has been based on the migrant advocate's personality and talents, **and** extraordinary support from program management. In many cases this split approach is the best the program can do with the funds it has, but generally it has not proven to be a satisfactory approach, chiefly because the demands of a basic field caseload do not mix very well with the requirements of a migrant practice. For example, in a typical basic field practice the program must work hard to cope with the flood of services requests which surge into the program offices. A migrant practice, on the other hand, requires its advocates frequently to work away from the office, often before or after regular working hours, conducting extensive outreach and cultivating client relationships. Basic field cases are likely to involve shorter time frames and present more immediate deadlines, while migrant cases commonly require long-term case development. As a result of such differences, part-time migrant advocates experience a continual pressure to put the specialized migrant practice on the back burner in order to cope with the more immediate demands of the basic field practice. [19]

4. <u>Inability to sustain both full-time paralegal staff and full-time attorney staff:</u>

One common consequence of a sub-critical grant is to force a migrant program to operate with an attorney but no paralegal or alternatively with a paralegal but no attorney. It is nearly impossible to carry out fully effective migrant legal assistance without both

[19] For example, the New Mexico grant, prior to the 1996 cuts, funded two attorneys, two paralegals and a secretary. Since the cuts, all staff are part-time migrant and carry a large caseload of basic field cases. As a result, the program no longer does outreach because outreach would spur a large number of valid wage and hour complaints the program cannot competently handle, given their existing caseloads. Part-time staff also find it difficult to take the time out of their normal duties to fully participate in state and national initiatives.

full-time paralegal and attorney capability. The expedient of using only a part-time (as opposed to full-time) paralegal and/or attorney brings with it the difficulties mentioned above under factor 3.

5. Difficulty attracting and retaining attorneys:

New migrant attorney applicants, naturally enough, tend to be attracted to positions where they can be trained and mentored by experienced migrant attorneys, where there is a strong sense of common mission, and where there is a well-established, specialized migrant focus. This puts the very small programs at a disadvantage in recruiting attorneys in the first place. For attorneys who are already working in smaller programs, the difficulties cited above can lead to staff frustration and high turnover in those programs. Also, the impact caused by staff turnover is always greater in small programs. A frequent hiring of new attorneys drains any program, but particularly smaller programs where already limited resources must again be spent on new staff training and the intensive mentoring discussed above. The problem is obviously compounded when turnover occurs in a one attorney program, as discussed below.

6. Inability to sustain a continuously strong program as normal turnover occurs:

This factor is given special emphasis, because it is a problem that plagues subcritical mass migrant programs[20], even where the other difficulties have been temporarily overcome. When normal staff turnover occurs in a larger program, there is still sufficient continuity of staff to retain the institutional memory and expertise and to pass it on from one generation to the next. However, in a smaller program --especially a one attorney program-- staff turnover usually means that the program has to start over again from scratch, not only reacquiring the legal expertise, but also re-learning the local labor markets and employment conditions, and re-establishing ties with the clients, client organizations, and service agencies. Much of this knowledge is acquired not in formal training, but rather in the week to week mentoring process while working with senior

[20] A high percentage of migrant legal services advocates from larger, more stable programs tend to stay within migrant legal services. The exceptional smaller programs are often staffed with experienced attorneys or paralegals that received their training in larger programs and then went on to work in smaller programs. Experienced advocates are the migrant legal services delivery system's greatest asset. The subcommittee felt that retaining greater numbers of experienced staff and lessening turnover were two of the primary objectives to be satisfied in order to improve the delivery system.

staff. Thus, even in cases where exceptional attorneys have been able to overcome the usual obstacles and have established an effective one or two-attorney migrant project, the program's effectiveness usually will come to a temporary halt when those attorneys depart and take a significant amount of time to reconstruct. Such lack of continuity also prevents the program from effectively pursuing complex litigation or long term, multi-year projects.

7. Lack of infusion of new ideas, vigor and creativity:

This is the converse of the problem discussed above in factors 5 and 6. Where turnover does not occur because the one or two migrant staff in a program remain unchanged for a period of many years, there is sometimes a danger of the program stagnating for lack of new blood and fresh perspective. One of the great advantages larger migrant programs have is the regular infusion of new staff who bring in new imagination and enthusiasm. They help to keep the migrant program vital by questioning the conventional ways of doing things and challenging the experienced staff to reevaluate and reformulate their practice in order to accommodate new insight or changed circumstances. The fresh energy which new staff can bring also helps to stave off cynicism and fatigue among the experienced lawyers and paralegals.

8. Difficulty responding to the seasonality of the practice:

Migrant practice is inherently seasonal, with intense outreach and intake demands concentrated in a particular season(s). A migrant program with at least several attorneys and paralegals can deploy its personnel so as to simultaneously cover both these seasonal, in-the-field demands *and* the in-office/in-court case handling requirements of ongoing cases. A migrant program below the critical mass level, however, often finds it difficult or impossible to be in two places at once. A migrant program with part-time staff has great difficulty doing any outreach or responding to migrant intake if the staff is not full-time migrant for at least the peak harvest months. Additionally, small programs with part-time migrant attorneys in states where nurseries are employing migrant workers during traditional off-season months find it impossible to both carry a demanding, basic caseload with many short deadlines and simultaneously engage in outreach to nursery workers in the traditional off-season.

9. Inability to attain broad geographic reach within the state:

A common problem faced by many migrant programs, large and small, is the difficulty of covering the widely separate agricultural regions within that state. A program with four or more attorneys has the capacity of putting a two attorney unit in at least two different locations. A larger program is also more likely to be able to deploy paralegals who are outreach specialists and who can temporarily move into an otherwise uncovered region during its peak season. However, these approaches are usually beyond the capacity of the one or two attorney program both because of personnel limits and because of limited resources for travel and outreach.

10. Inability to maintain outreach and client contact beyond the borders of the state:

Equally important to most migrant programs is the need to stay in contact with individual clients and more generally with the client community after they have left the state, for example after they have returned to a home base such as Florida, California, Texas, or Mexico. Representing migrant clients who are hundreds or thousands of miles away in ongoing litigation requires a considerable commitment of resources. In many instances this includes travel by migrant staff to the clients' home base or financing clients' travel to the site of the court where their claim is pending. In addition, the ability to conduct outreach to the client community in their home base before and after the season is often vital to the representation of that community. In many cases it is sufficient for the program to keep in touch with its clients through the normal means of communication. However, in some cases it may be essential to meet with the clients in person or to conduct witness investigation in the home base state. Likewise it may be critical to bring the clients to the stream state for ongoing litigation. For a small program, staff and resource limitations make this kind of interstate client contact extremely difficult. Home base programs, though willing to help, are normally already stretching their own staff and resources just to meet the needs of their own clients with whom they have contact in that home base state.

11. Difficulty in assisting home base programs which need some local help from the small program

Frequently a larger migrant program in a home base state accepts a case arising from work performed in a stream state and needs the help of that stream state's program for local investigation, local counsel, or some other form of representation. The smaller stream state programs are often not in a position to assist the home base program, perhaps because of their own geographic distance from the relevant area with their state, or due to lack of resources, staff or expertise.

12. Insufficient resources to carry on significant litigation:

While many migrant cases can be litigated with modest resources, some important migrant litigation can be very expensive, for a number of reasons. These more complex, multi-party cases typically involve numerous plaintiffs and at least several defendants. Grower defendants and their attorneys often vigorously oppose farmworker claims, even where their defense has little merit. They may do so in an attempt to discourage future similar litigation or to establish a point of law for an industry. Such cases usually require extensive depositions and document discovery, and may require use of expert witnesses and translators. Significant amounts of travel by the legal services staff, by the clients or both are normally required in migrant litigation. To undertake a typical case, the legal services program must be prepared to commit $7-10,000 in up-front costs per case, if the case should go to trial. Even though these costs may be recovered if the plaintiffs are successful, the program has to maintain a sufficient litigation budget to front the costs. Many of the smaller programs largely exhaust their limited resources on personnel costs, and are unable to adequately budget for such litigation costs.

13. Insufficient resources to carry out effective outreach:

Sustained and skilled outreach is the single most important element in establishing and maintaining an effective migrant practice. This requires a sizable budget allocation for staff and client travel costs. However, many of the smaller programs find that resource limitations require them to substantially restrict their travel expenditures in order to meet personnel costs. Part-time staff, in particular, find it difficult to engage in outreach, most of which must be done in the evenings, if they are expected to continue to carry a basic caseload. Too often, part-time staff are, in effect, expected to work "double

shifts" in order to continue their basic field work and provide migrant representation. This results in burnout and turnover or the underserving of the migrant population.

14. Insufficient resources and expertise to take part in state and national initiatives on behalf of clients

Migrant clients occasionally need representation at the national level to protect or advance their particular interests. Examples include: representation before regulatory agencies such as the IRS or the EPA or discussions regarding enforcement of existing laws with agencies like the U.S. Department of Labor. Yet the limitations in resources and staff expertise, which have been noted above, make it very difficult for smaller programs to meaningfully represent their clients' interests in these forums. The task of providing this representation falls primarily on the larger migrant programs, which results in (a) the particular interests of clients in the smaller state are often not be fully represented where those interests differ from the interests of clients in the larger states; and (b) the larger programs carry the financial burden of national advocacy to the detriment of their own clients.

B. DIFFICULTIES FOR SMALL NON-LSC FUNDED MIGRANT PROGRAMS

Despite laudable efforts to create new entities, large gaps remain in the farmworker legal services delivery system as a result of the LSC restrictions. "Unrestricted" migrant programs do not exist in most states, including several states with large farmworker populations. Unrestricted programs serve virtually none of the states with small farmworker legal services programs.

Furthermore, even where unrestricted programs have been established, some are small in size, consisting of one or two attorneys, with little or no paralegal support. Several of the non-LSC farmworker projects have been saddled by their funding sources with some of the same restrictions imposed on LSC grantees. Finally, in setting priorities, a number of the unrestricted farmworker programs have elected to concentrate on class action litigation and legislative advocacy rather than handling cases for individual farmworkers who are ineligible for LSC assistance.

The end result is that most LSC farmworker legal services programs are unable to make meaningful referrals of ineligible farmworker clients. In states with relatively large

numbers of LSC-ineligible clients or pressing needs for legislative advocacy on behalf of farmworkers, this situation has the potential for demoralizing LSC migrant program staff.

The delivery system gaps have made the hiring and exploitation of LSC-ineligible clients more attractive for unscrupulous employers and farm labor contractors because, in the absence of adequate legal services representation, there is little chance of any sanctions being imposed for abuses. Exploitation of LSC-ineligible farmworkers potentially will depress the wages and working conditions of farmworkers eligible for LSC representation. Thus, having capacity to effectively represent these clients is critical for all farmworkers.

Creation of multi-state or regional LSC programs to cover states with small LSC migrant grants may increase the chances that an unrestricted farmworker program will serve all or part of the same service area. While current funding may initially make it difficult for some unrestricted programs to serve farmworkers in a multi-state area, creation of multi-state or regional programs may provide an impetus for unrestricted providers to seek out additional funding for representation of workers in adjoining states. For this reason, in evaluating the possible configurations of multi-state or regional LSC farmworker programs, the presence of unrestricted farmworker projects should be considered.

Small unrestricted farmworker legal services providers face difficulties similar to those encountered by small LSC migrant programs. Especially when a farmworker unit is staffed by one or two persons within a larger organization with a strong identity for another kind of work, and no experience with direct client services, the migrant staff may face the same pressures as LSC small migrant program staff to "belong" to the parent organization and share in its mission. In an organization which generally does not work directly with clients who are poor, small non-LSC programs can face even more severe problems of client access to their services than their LSC counterparts in basic field programs. The level of controversy generated by day to day migrant advocacy and the organized nature of the adverse parties may cause some non-LSC programs which host a farmworker unit, regardless of size, to confront a level of political opposition with which they are uncomfortable.

Because of the restrictions, there is often additional pressure for the non-LSC farmworker unit to become the "immigrant" unit or the "immigrant worker unit", thereby diluting further scarce resources for farmworker advocacy. And, because non-LSC resources are often viewed as limited, a small farmworker unit within a larger non-LSC program may not be able to effectively compete for grants or other sources of funding because of organizational rules. Finally, it is potentially more costly and time-consuming to maintain attorney-client relationships with many of the clients whom LSC funded programs cannot represent, such as undocumented workers, and H-2B workers from a variety of developing countries.

Cooperative and collegial relationships between LSC and non-LSC farmworker legal services providers are of considerable value to the unrestricted programs. Some of the aforementioned problems have been lessened by a cooperative arrangement between the unrestricted program and its LSC counterpart. In some instances, small unrestricted programs have received many case referrals from the local LSC farmworker program, thereby reducing the outreach costs for the non-LSC provider. Likewise, good working relationships with LSC staff have helped reduce the isolation of unrestricted program staff.[21] Unrestricted programs have also taken advantage of trainings, publications, and advice on strategy from LSC programs. Greater collaboration on priority setting and planning of work between LSC and non-LSC providers could also stretch the existing resources in both providers to maximize delivery of services to migrant farmworkers.

V. POSSIBLE SOLUTIONS TO SUBCRITICAL SIZE LSC FUNDED PROGRAMS

The solutions urged in 1994 did not seem to the subcommittee to effectively address the problems raised by programs with less than a critical mass. The subcommittee also had broad agreement that some of the solutions posed in the 1994 paper were no longer either appropriate or realistic. For example, requiring supplemental measures (i.e., additional funding from other sources) of programs with sub-critical mass might deprive a non-LSC funded migrant program of needed resources or greatly diminish the chances of beginning non-LSC funded migrant advocacy in a state. Since

increased LSC funding for migrant advocacy is very unlikely and so many programs have such small LSC grants, a proposal for small states improvement grants administered by LSC also seemed entirely unrealistic. Finally, simply eliminating the lowest tier of grants would generate very limited funds to improve the overall delivery system if that were possible.

The subcommittee's goal was to develop a series of models which could improve the delivery system and do so through a more rational system of migrant grants within the framework of LSC's normal competitive bidding grant process. The models which met our criteria of effectiveness and accountability were:

1) Multi-State Programs;
2) Grants or Sub-grants from Small States to Base States;
3) Regional Programs; and
4) One National Migrant Legal Services Program.

Unless the national program (model 4) is widely embraced, the sub-committee envisions a delivery system, which could encompass all of the other models, and would also include some statewide programs which have sufficient critical mass.

The subcommittee considered another model, "issue-based special grants", such as "H-2A" or "Sharecropper", but concluded that such a system would be unworkable and create additional problems. The subcommittee also considered, and ultimately rejected, any model based on "cooperation" or "collaboration" without the accountability inherent in a formal grant. Even when small programs have successfully collaborated with other programs to overcome some of the difficulties inherent in sub-critical size, those efforts have not been sustained over a long period of time, and have usually been driven by personnel rather than institutional considerations. The subcommittee focused on solutions that could build stronger and more stable **institutions** to support and sustain migrant advocacy.

Although there are small states where effective migrant advocacy now occurs, including programs represented by the subcommittee members, the models described below would **improve** the delivery of services in those states. The subcommittee

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[21] For example, co-counseling between LSC and non-LSC programs are appropriate for cases in which a claim for attorneys' fees is important to protect the interests of LSC eligible clients or in which a group of

recommends full consideration of each of the following models. Whichever models are ultimately implemented, the subcommittee proposes that any changes in staff and offices be phased in over a period of time and not be immediate.

A. MULTI-STATE PROGRAMS

1. Definition

A multi-state program, as envisioned by the subcommittee, would be a program with two or more contiguous states [or, conceivably, parts of states] whose funding from all sources meet the critical mass criteria and which share some or all of the following characteristics: 1) similarities in client populations, crop patterns, or agricultural practices; 2) movement of clients across state borders, either in the same job or in successive jobs or for the purpose of obtaining housing; 3) common legal issues for the clients; 4) common grower groups or associations, or 5) some common forums, such as regions of the Department of Labor or U.S. Courts of Appeal. Under the multi-state model, as the subcommittee proposes it, a multi-state program would have resources (from all sources) sufficient to support six full-time advocates (lawyers and paralegals) or a minimum of three full-time lawyers and a total of six full-time equivalent advocates.

The subcommittee envisions that a multi-state program's LSC grant would be awarded to an existing basic field program within one of the states. That grantee should be the program with the best capacity to protect migrant advocacy and a firm commitment to provide effective and efficient legal services to migrant and seasonal farmworkers.

2. Experience With Multi-State Programs

The multi-state program is a proven model. The largest of the current multi-state programs, and one, which meets the six full-time advocate criteria, is the Minnesota/North Dakota program.[22] The Minnesota/North Dakota program has two offices, one in Minneapolis, which serves southern Minnesota, and one in Fargo, North Dakota, which serves the Red River Valley in both states. Each office is staffed by two attorneys, a paralegal and support staff. The program also hires eight summer paralegals who circuit-ride over a vast area. The two offices are five hours driving time apart, a

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farmworkers, some of whom are non LSC-eligible and some of whom are, present the same claims.

distance the staff describe as "manageable". The staff stay in touch through numerous phone calls and the migrant program director, who is based in Minnesota goes to the North Dakota office five or six times each winter. In addition the permanent staff have a yearly retreat of 2-3 days to plan their work for the coming year and a half-day meeting each spring before the seasonal staff arrive. Each May a 2 and a ½ day training is held for the summer staff. The program has been able to retain experienced staff, attract qualified new staff, and engage in sustained effective advocacy on behalf of migrant clients in both states over a period of many years. Obviously, some resources and efforts go towards maintaining a functioning work group despite the distance. Aside from the criteria mentioned above, some of the issues to be considered in deciding which states could form multi-state programs are: 1) how can services to clients be enhanced or improved by this multi-state configuration? 2) is there a non-LSC funded migrant program in the multi-state area and can services to clients be enhanced by cooperation between the multi-state program and the non-LSC funded program? 3) can training and supervision of existing and future staff be enhanced? 4) can some staff be profitably shared? (sharing community education specialists, outreach workers, and law clerks may expand outreach or community education efforts or litigation support capacity) 5) do the current staff already work together on issues or share ideas regularly? 6) what resources, existing staff, and technology would be brought to a multi-state program, and 7) are other migrant service providers, such as health or daycare providers, also operating on a multi-state basis in the area?[23]

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[22] Other states in which LSC has given a multi-state grant are Maryland/Delaware and Maine/New Hampshire, although neither of these is large enough to meet the six full-time advocate criteria. At one time the Maryland/Delaware program also included Virginia.

[23] Although the subcommittee arrived at these hallmarks without referring to LSC's February 12, 1998 state planning letter, the issues enumerated above are quite similar to many of the factors LSC urged programs to consider in looking at the statewide configuration; e.g. size, complexity, cultural and ethnic diversity/homogeneity of client population; geographic, physical and historical distinctions and affinities within the state; assessments of program's performance and a capacity to deliver effective and efficient legal services in accordance with LSC and other professional criteria; ease and efficiency of client access to services and opportunities for improvement; capacity to efficiently and effectively conduct community legal education, pro se and outreach activities; the availability of training, expert assistance and information about legal developments; relative costs associated with fiscal and administrative responsibilities and potential savings in management, board, and administrative costs.

3. Advantages/Benefits

Multi-state programs that reach the "critical mass" threshold have the potential to eliminate or reduce many of the difficulties outlined in section F, above. A multi-state program would be able to garner a critical mass of full-time attorney and paralegal staff and pool sufficient resources to do meaningful outreach and advocacy as compared to the previous single-state components. The administrative burden on current migrant staff could be reduced because there would be only one grantee for the multi-state program, and staff would be responsible to one administration and have one set of common operating policies. Some areas in which a multi-state program could **immediately** see improved services to clients might be: 1) use of a single 800 number, with rollover capacity, so that clients and potential clients could always reach migrant staff, instead of voice mail; 2) the same written client education materials could be replicated, reducing the amount of time needed to create the materials and the expense in printing them; 3) presentation formats for client education (mini-lectures, skits, videos, etc.) could be replicated, reducing the amount of time needed to create them and possibly improving their effectiveness; 4) staff could be pooled for outreach campaigns in areas which are inconvenient for the current recipients or for which the current recipients lack adequate staff and volunteers; 5) strategizing on joint work on common issues; 6) greater efficiency through joint planning on priorities, outreach and advocacy; and 7) some staff (i.e. community educators, paralegals, telephone intake staff) could be used immediately and effectively across state lines. Over the long term, a multi-state program may have funding possibilities that would not be available to a single small state program, either from regional foundations or through fellowships or the like.

4. Qualitative Factors In Multi-State Configurations

In assessing which configurations of states create the **best** multi-state programs, the subcommittee believes that the following qualitative factors can be used to help in selecting the appropriate mix of programs to form multi-state programs and the appropriate basic field program to apply for the multi-state grant:

1) Is the funding purely LSC migrant funding or does the parent program and other programs in the state allow the migrant component to receive a share of other annualized funds such as IOLTA or state funds or supplementary

LSC funds? [If so, the parent program has a demonstrated commitment to migrant advocacy.];

2) The duration and experience levels of the migrant staff. [Two or three programs which have experienced a great deal of staff turnover and have inexperienced staff should not be paired with each other alone; the multi-state program should include a program which has been able to train and retain staff.];

3) The level of support and care from the basic field "parent" programs, indicated by factors such as: a) use of parent program litigation resources (people and $$); b) parent program actions to assist migrant clients to access migrant component's services (i.e. bilingual support staff, user friendly phone system, etc.); c) parent program willingness to support migrant program activities financially and politically when needed [the presence of these factors demonstrate parent program commitment to migrant advocacy];

4) Ties to a base state migrant program or a contiguous state's migrant program [the demonstrated use of these ties to strengthen a program's migrant advocacy is a plus];

5) History of effective migrant advocacy (with current staff) [at least one program in the multi-state configuration should have a history of effective migrant advocacy]

6) Whether there exists within the state an effective non-LSC funded migrant program with whom the LSC funded program can collaborate [if multi-state programs can be created in a way that maximizes resources by including a non-LSC migrant program within the service area, it is a benefit to the client population[24]]; and

[24] The lack of a program which can advocate for migrant farmworkers who are ineligible for LSC representation is a valid concern for LSC funded programs, as wages and working conditions for U.S. citizens and lawful permanent residents deteriorate if agricultural employers can hire undocumented workers for sub-minimum wages and employ them under unlawful and unsafe conditions. In addition, for LSC eligible farmworker clients, the lack of some cost-effective remedies like class actions or legislative advocacy, mean that the limited LSC resources for farmworker advocacy are further diluted.

7) History of effective use of resources between LSC and non-LSC funded migrant programs within the state [if there is a positive history to serve as a model for the multi-state service area, the chances for maximizing resources for clients in the multi-state service area are enhanced].

At least one program within the multi-program configuration should meet most of these criteria, and probably the program with the strongest history and most qualitative factors in its favor should be grantee program. Where none of the programs measures up on these qualitative factors, one of the other models discussed below may be more appropriate.

5. Ensuring Accountability In Each State

To ensure accountability to the overall delivery system in the non-grantee states, two or three year contracts, like that used in North Dakota, could be employed.[25] Another accountability measure could be advisory councils. The basic field program could create either one council with representation from each state or councils for each state. Because advisory councils need not comply with the LSC requirements for boards of directors, advisory councils could include clients, private attorneys, and migrant services providers and advocates who were knowledgeable about farmworkers in their state. Advisory councils should make periodic reports to program management, including the board of directors, so that regular channels of communication are kept open and used and problems or perceptions of problems are addressed promptly. In situations where the multi-state grantee would otherwise receive a small amount of migrant LSC funding and another state a far larger grant, the board of directors of the grantee program should probably include at least one migrant "at large" representative from the larger state as another accountability measure.

6. Meeting Funding and Other Challenges

In the past, objections were raised about the militia-state model for fear that funding opportunities within a state, such as IOLTA or state funding, would be lost if a

[25] The statewide basic field North Dakota program signs a three year contract with the Minnesota migrant program relinquishing its claim for the North Dakota migrant grant and guaranteeing that the multi-state program will receive its fair share of state funding from North Dakota. The contract keeps a formal relationship between the two programs and a vehicle for discussing potential problems. North Dakota retains limited responsibility for adequate resources for migrants in the state and Minnesota is accountable for their use of the North Dakota grant amount.

basic field program within the state were not a recipient. The Minnesota/North Dakota program does receive significant state funding from both states, and provides proof that this challenge can be successfully met. Some of the factors which have been instrumental in securing funds from North Dakota resources for the two-state program administered from the Minnesota-based parent LSC program are: 1) the contract between the two programs includes a provision that the North Dakota program will assist the migrant program in securing such funds from the North Dakota sources; 2) a purposeful, ongoing working relationship between the migrant program and the executive director of the statewide North Dakota program, 3) strong migrant program advocacy for those funds which still acknowledges the significant needs of the North Dakota basic field and Native American programs for additional funds; and 4) other binding aspects in the two-program contract to keep the local North Dakota migrant office and the basic field program in professional contact with one another, such as opportunities for shared library resources, continuing education opportunities, effective cross-referral plans, and the like.

Other objections have been concerns over licensing of attorneys and practice in more than one state. Those difficulties have been successfully overcome for many years by the existing multi-state programs.[26]

The subcommittee did discuss, at some length, some problems that may not be alleviated by a multi-state program or that will surely remain if a small state becomes a part of a multi-state program. One such problem is distance. Depending upon where the primary agricultural areas of the states in a multi-state program are located, distances for outreach may not be reduced at all. However, in most geographically large states now there are distant areas of the state which require overnight travel for outreach. In other situations, the distances to agricultural areas of contiguous states are no greater than the distances to far-flung agricultural areas in the same state.[27] The subcommittee felt that,

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[26] The Fargo, ND office of the Minnesota/North Dakota office considers the entire Red River Valley, which lies in both states, to be its service area. Two lawyers are based in Fargo, with at least one licensed in each state. The Maryland/Virginia/Delaware program always had one lawyer licensed in Virginia and had arrangements with the Delaware basic field program to provide co-counsel on any cases to be brought in Delaware.

[27] For example, the largest apple orchards in New Hampshire are about the same distance from Bangor, Maine as the northern broccoli producing region of Maine. Much of Virginia's tobacco belt is closer to Raleigh, North Carolina than the center of the apple industry in western North Carolina. From the northern boundary to the southern boundary of the Minnesota/North Dakota program is ten hours driving time, only

with a multi-state program, at least staff could be pooled so that outreach visits could be made to significant agricultural areas. Another problem would be the possible loss of local contacts if eventually staff were concentrated in one or two offices. The subcommittee felt that, realistically, those relationship would probably be weakened if the multi-state program did not have a continuous presence in the area, but that all programs currently struggle to make and keep contacts in other provider agencies, especially in the more far-flung parts of their service areas, and have developed some mechanisms (newsletters, listserves, training conferences) to facilitate those relationships.

On balance, though, the subcommittee feels that a multi-state program offers a real opportunity to minimize most of the difficulties associated with a lack of critical mass and maximize effective service delivery for migrant farmworkers.

B. GRANTS OR SUB-GRANTS TO BASE STATES

Currently, Texas Rural Legal Aid receives the Arkansas grant directly and is a sub-grantee for a portion of the Kentucky grant. Although the grant and sub-grant situations work differently, they have each proven to be a viable model for effective migrant advocacy

1. The Arkansas Migrant Legal Services Project

The Arkansas Migrant Legal Services Project (AMSLP) is an example of both an integrated two-state project and a base/stream project. AMSLP is a special project operated by Texas Rural Legal Aid. In essence, a single program (TRLA) serves both states using the combined grants from the two states.

The total Arkansas migrant grant is $59,000. For many years, the grant went to an Arkansas basic field program. However, despite conscientious efforts by that program to create and maintain a viable migrant project, it finally concluded in 1998 that the grant was too small to sustain an ongoing migrant project. The program decided not to bid for the migrant grant for 1999 and asked TRLA if it was interested in bidding on the grant.

TRLA concluded that the grant is too small to adequately support a full-time staff office in Arkansas. Instead, TRLA assigned an experienced attorney and paralegal from its south Texas-based staff to cover Arkansas in much the same way it would cover an

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slightly more than the time required to drive from Virginia's Christmas tree region in its southwestern corner to the vegetable fields on the Delmarva Peninsula.

outlying region of Texas. This attorney and paralegal have primary responsibility for staffing AMLSP, but they also have the ability to call on other TRLA staff to assist them when needed. The attorney and paralegal make regular trips to Arkansas to conduct outreach, community education, and intake. They sometimes arrange for other TRLA staff to go with them or in their stead. This attorney and paralegal have additional access to Arkansas migrant farmworkers because of their location in south Texas, the home base of many of those workers, and an area through which many other pass on their way to and from Arkansas.

In addition to the Texas-based staff, AMLSP has contracted with an experienced migrant service professional who works with the migrant center in Hope, Arkansas, to do part-time outreach and education in Arkansas. This contract paralegal gives AMLSP better ability to respond quickly to immediate needs, to maintain an ongoing presence in Arkansas, and to stay in closer contact with other Arkansas groups who deal with migrants.

AMLSP is also establishing relationships with service organizations and advocates around the state of Arkansas, educating them about the rights of migrants and the services provided by AMLSP and asking them to serve as referral points for clients needing assistance from AMLSP. The project has enlisted an experienced private labor law firm to collaborate, to serve as local counsel or co-counsel where appropriate, and to provide expert consultation to the AMLSP staff about Arkansas professional, judicial and legal issues.

Although it has been in existence less than one year, AMLSP has been able to initiate a number of significant employment cases and has already resolved several of them successfully. Because the project is able to use experienced staff, the quality of the outreach and advocacy activities has been consistently high. If one of the AMLSP staff leaves TRLA or is reassigned to other duties, the project's cases can easily be transferred to other experienced TRLA staff and the institutional memory of the work in Arkansas will be largely preserved. By itself, the Arkansas grant would have been too small to afford these advantages.

Having the experienced program staff located in south Texas has also proved to be an advantage, since many clients have sought help when they had returned to Texas or

as they passed through Texas on their way home. For clients who were recruited in Texas, the project has been able to have a choice of a forum in Texas. TRLA has concluded that because of good inexpensive airline connections between Texas and Arkansas, travel to Arkansas is no more costly or time consuming than among TRLA's existing far-flung offices.

Most of the model's shortcomings result from the small grant size, which is not sufficient to support its own full-time staff office in Arkansas. Although AMLSP diminishes many of the difficulties associated with a lack of critical mass, the project still ideally would have some full-time staff permanently in or nearer to Arkansas. If this were possible, the nearby staff could spend more time in Arkansas, respond more quickly and easily to emergency needs, and be able to more regularly cultivate relationship with individuals and institutions in Arkansas. These disadvantages could conceivably be addressed if other adjoining states in the region were included in the partnership, so that a full-time office(s) in the region could be established and the benefits of the base state presence be maintained.

2. The Kentucky Migrant Legal Services Project

The Kentucky Migrant Legal Services Project (KMLSP) is a partnership project, jointly operated by TRLA and the Appalachian Research and Defense Fund of Kentucky (ARDF). It has been in existence for five years. The total Kentucky LSC migrant grant is only $36,000. The grant goes to ARDF and ARDF sub-grants $20,000 to TRLA.

For two of the five years of the KMLSP, the project had a Skadden Fellow, Patrick Walsh. The ARDF share of the grant was used to pay his overhead. Currently, ARDF uses their part of the grant to pay part of the time and overhead of an experienced basic field attorney, Ira Newman, who is assigned by ARDF to work on migrant issues.

TRLA has allocated its sub-grant in two different ways. First, it has paid a fixed percentage of the salaries of the attorney and paralegal who have been doing most of the Kentucky work, Javier Riojas and Roman Ramos. Second, it has paid for the logged time and expenses of other TRLA attorneys who work on KMLSP cases and matters. Since the sub-grant does not cover all the time spent by Ramos, Riojas, and the other attorneys, the excess is covered by TRLA.

Each season, Roman Ramos makes several outreach trips to Kentucky, for two to three weeks each, at strategically timed points in the season. The primary purpose of these trips is client education, but often some intake or client follow-up is also accomplished. TRLA also staffs a toll-free line, which rings in the TRLA Laredo office, where Ramos is based, in order to respond to telephone contacts generated by the outreach. Many Kentucky clients from Texas and Mexico also come to TRLA offices with problems after they have finished work in Kentucky and have returned to Texas or are on their way home to Mexico. [Kentucky has a large number of H2A workers in tobacco, and Laredo is a major border crossing point for the Kentucky H2A's].

TRLA attorneys handle pre-litigation and litigation, which arise from Kentucky employment, filing some cases in Texas, when long-arm jurisdiction applies, and some in Kentucky. From 1996-98, Patrick Walsh would handle some of the Kentucky-filed cases as lead counsel, with TRLA as co-counsel. Walsh co-counseled the Texas-filed cases. Prior to and since Walsh's tenure, TRLA serves as lead counsel on all cases; if the case is filed in Kentucky, ARDF provides local counsel either from one of its basic field attorneys or by locating a private attorney willing to serve as local counsel (*pro bono* or under contract with KMLSP or on a private, contingent fee basis). Of course, many cases are resolved without litigation.

Dollar for dollar, KMLSP has produced a significant amount of both outreach and litigation. KMLSP has been able to draw on the services of one of the most highly skilled migrant paralegals in migrant legal services and on skilled and experienced attorneys. By itself, the Kentucky grant could not afford staff of this level of experience. In addition, TRLA's involvement was essential in securing the Skadden fellowship. The TRAL partnership enabled KMLSP to demonstrate the level of training, support, and supervision, which Skadden requires. When Walsh arrived, the TRLA staff, especially Ramos, had already laid substantial groundwork . Walsh had training and support from TRLA, even though he was the only full-time staff in Kentucky. After the fellowship ended, the institutional memory of what had gone before was largely retained by the TRLA staff, who were familiar with the project's work. Like the Arkansas, project, having offices and staff in Texas has proven to be an asset, and for clients recruited in Texas, the ability to bring suit in Texas has been an advantage.

Like the Arkansas project, ideally the Kentucky project needs some full-time staff permanently in or near Kentucky. Staff in or nearer to Kentucky could spend more time on outreach at less cost, respond to emergency more effectively, and more regularly cultivate relationships with individuals and institutions in Kentucky. The partnership has reduced many, but not all, of the problems associated with a lack of critical mass. If enough nearby states were included in the partnership to support a full time office(s) in the region, the benefits of the partnership could be enhanced.

C. Regional Programs

Regional programs, as envisioned by the subcommittee, are essentially larger multi-state programs, but their administration could be from a new freestanding migrant legal services entity or from one of the existing legal services programs. Regional programs may be appropriate where sufficient resources (critical mass) cannot be brought to bear without joining a larger number of states' migrant LSC grants or where there are significant advantages to several smaller programs joining with a large program.

Currently, no regional program exists, so we do not have the benefit of experience with this model. The subcommittee envisioned that a regional program would consist of contiguous states and that they would have at least some of the common factors enumerated for multi-state programs (i.e.; common clients, crops, patterns of migration, legal issues, defendants, or forums). The same seven questions to determine an appropriate multi-state configuration could be used to determine the regional configuration. Also, the same seven qualitative factors, in addition to available funding level, should be used to determine the appropriate mix of programs to create a regional program, which has "critical mass".

Regional programs present a way to configure the delivery system so that less experienced staff can receive support. Regional programs, as envisioned by the subcommittee, would probably phase out part-time migrant staff in most states to allow for gathering inexperienced staff in one or two locations where they could receive mentoring. For several years, at least, the inexperienced staff could be developed by experienced staff. Travel costs for such a regional program would be higher, but, as with the grants to base state model, high quality advocacy would be possible on priority issues throughout the region immediately. As staff gained experience, a regional program could

base them more disparately if needed. A regional program could also determine to retain a part-time experienced attorney if that arrangement fulfilled delivery needs. Regional programs could follow more of the approach used by the U.S. Department of Labor's Wage and Hour Division in targeted enforcement swings; i.e. concentrating staff resources from time to time in selected areas of great client need (for example, harvests in which housing is especially deplorable or where minimum wage violations are prevalent) and maximizing the use of scarce resources in widely scattered geographic areas. Like concentrated outreach efforts in distant parts of large states now, such efforts often are quite effective, especially with skilled staff.

A new freestanding regional migrant program, while more time-consuming initially, might be an effective solution. For example, "Farmworkers Legal Services of the X", might effectively serve clients over a large region by gathering staff together in one or two locations, and putting savings from administration into travel budget for staff to conduct outreach to far-flung parts of the service area. Such programs might be able to maintain seasonal outreach staff at the offices of other service providers in some of the region's states.

D. ONE NATIONAL MIGRANT LEGAL SERVICES PROGRAM

The model which would entail the most change is the model of one national migrant legal services program. The subcommittee envisions that this would be a newly-created free-standing program, not tied to any existing basic field program, whose sole purpose is to provide legal services to migrant farmworkers.

Some of the delivery advantages of this model are 1) program management could take the best, highest quality work currently done and use it as a model to replicate similar quality advocacy for migrant farmworkers throughout the United States, 2) staff with a wide variety of skills and experience would be available to the overall effort; 3) national training could be done as a part of the national program's budget and the program would have better ability to assess training needs of staff; 4) a pool of experienced advocates with different advocacy styles and strengths would be available to develop less experienced staff and effectively represent clients; 5) resources could be deployed flexibly similar to the regional model; 6) an effective national recruitment effort could be mounted efficiently for qualified permanent and seasonal staff; 7) savings on

administration would go for migrant delivery, and 8) a national program could effectively advocate for a new migrant estimate when the need arose with a unified voice.

Of course, at least initially, a national program would need to attend to more administrative matters, to ensure procedures and service delivery were as uniform as possible across the country. But many programs already use very similar intake sheets, interview guides and other mechanisms to ensure high quality services. Given the orientation in the migrant legal services community to results over process and the long-standing collegial relationships between many experienced migrant staff, creating a national program might not be inordinately time-consuming, nor its management or maintenance tremendously more difficult that the management of the largest migrant programs currently.

One concern about the model, though, was whether funding for a national program would be secure. Two distinct schools of thought emerged regarding this concern. One is that creating one national program would make it simpler for interests opposed to migrant advocacy and legal services to create sufficient pressure to destroy earmarked migrant LSC funding because all criticism could be directed at only one program. Another is that creating one national program would put migrant advocacy in a stronger position politically because those elected representatives in Congress who do strongly support migrant advocacy would feel more free to support the national program over a controversy in another state or district.

The subcommittee felt that this model had enough potential to merit serious consideration. Creating a national program would not require total consensus, but it would require agreement from significant group of programs and advocates to have such a program be able to make a viable bid in the competitive bidding process.

VI. RECOMMENDED PROCESS TO ACHIEVE A SOLUTION OR SOLUTIONS TO SMALL MIGRANT LSC GRANTS

A. THE TIME FRAME

The migrant legal services community has a window of opportunity in which to address the challenges presented by the current migrant LSC delivery system, with many programs of sub-critical mass. Not since Dan Bradley's tenure as President of LSC has the corporation had a president who is so personally interested in and committed to

advocacy for farmworkers, nor is it likely to in the forseeable future. The 2000 elections raise the specter of uncertainty about the direction, which LSC will take in a new administration. Therefore, all of the time between now and the 2001 grant cycle are valuable.

All migrant grants will be included in LSC's competitive bidding cycle in 2001. The notices of intent to compete, for each state's migrant grant, will need to be filed in June of 2000. The applications will be due beginning in late June, unless LSC grants an extension. Having all migrant grants open for bidding gives a tremendous opportunity to the migrant legal services community to deal with the longstanding and widely acknowledged difficulties with small migrant programs enumerated in this paper. Resolving these problems may well require the participation of some programs which do have critical mass. As a community, migrant legal services advocates and programs have, at this juncture, an opportunity to improve the delivery system, through LSC's competitive bidding process.

B. "Hold Harmless"

At the outset, the subcommittee proposes a limited "hold harmless" provision to the process, a provision that would protect current migrant staff in small programs and the services they are currently delivering to migrant clients. In order to treat all staff and clients fairly, we propose that all current migrant staff, even in very small programs, who want to continue to do migrant advocacy would keep their jobs, and, if they desire, could remain in their current locations until at least January of 2002. The most valuable asset to create more effective migrant advocacy is committed staff, and it is critical that change in the delivery system not prejudices the advocates themselves.

C. Decisions To Be Made By Programs

If current staff should leave in the meantime, then the new delivery structure migrant management (multi-state, regional, base state, or national) could make staffing decisions, which would meet the needs of the new structure and move towards the goal of creating a critical mass of staff and resources, including eliminating single advocate offices and siting new staff with responsibilities for those geographic areas in offices which meet or are moving towards attaining critical mass.

Initially, some re-configured programs would probably have part-time migrant attorneys. Ideally, by pooling resources, at least some of those attorneys could become full-time migrant attorneys immediately, although they might have more responsibilities than currently (i.e., co-counseling on other cases, outreach in other states, etc.). In the interim, though, arrangements with the basic field program would need to be made to ensure that the part-time migrant attorney did not lose any fringe benefits or salary if the part-time status were unchanged. Realistically, in some multi-state configurations, a migrant attorney might have to continue to work as a part-time migrant/ part-time basic field attorney for some time.

The subcommittee discussed at length, in the multi-state context, whether it is necessary or even desirable for the entire six-advocate unit to be in one location. Although there was some dissent, the majority concluded that location of staff and offices should be the decision of each migrant program that meets critical mass. All subcommittee members felt no changes in location of offices or staff should be made, without staff consent, before January of 2002.

For the reasons discussed above, however, the subcommittee strongly opposes a solo outpost of an inexperienced attorney and believes that an inexperienced migrant attorney should never be placed in an office without at least one experienced migrant attorney. Hopefully, any inexperienced attorneys who would become part of a new delivery structure would be amenable to being located where they could have day-to-day mentoring and supervision. On the other hand, many subcommittee members felt strongly that in order to retain very experienced staff, whose families and lives may be entrenched in their current communities, some one-attorney offices with very experienced attorneys may be in the best interests of the clients and the re-configured migrant program.

The subcommittee believes that by January 2002, a new delivery structure grantee should be able make staffing and space arrangements which best suit the delivery needs of the clients of the small state and the overall program. A few subcommittee members felt strongly that a deadline was needed for all programs to reach critical mass in order to ensure that the newly configured grantees actually took steps to make the desired changes to create critical mass. The majority view, though, was confidence that, after a year or

more of experience with the new configurations, migrant program management can base staffing and office location decisions upon delivery considerations, and a strong belief that the high level of respect and collegiality among migrant advocates will support rational decisions which aid to build stronger and more stable institutions for migrant legal services delivery.

D. STEP BY STEP

The subcommittee proposes the following process for consideration and possible implementation of the recommendations of this paper:

1. Distribution of this paper by the Farmworker Project Group

The subcommittee submitted this paper to the Farmworker Project Group Steering Committee in late October, 1999. The Steering Committee requested the changes specified in section III. B, above, which the subcommittee declined to make but included in this paper as the Steering Committee's position. The subcommittee recommends that the Steering Committee now disseminate this paper to the entire Farmworker Project Group (all LSC and non-LSC funded migrant programs) with a cover memo requesting migrant staff to share the paper with the basic field program director or the director of the non-LSC program.

2. Follow-up regional conference calls by the Farmworker Project Group

The subcommittee proposes that the FPG regional and at-large representatives convene conference calls a few weeks after distribution of the paper for all interested migrant staff in the region to comment upon the paper. A subcommittee member should be available on each call to answer questions regarding the paper or the process used by the subcommittee to reach its conclusions. Although opposition or resistance to some or all of the proposed models is to be anticipated, this can be constructive. The subcommittee's consideration of the issues was considerably helped by frank discussion of both the problems caused by a lack of critical mass and the problems which might arise in the models. The subcommittee attempted to meet the problems head-on, consider ways to minimize them, and assess those which remained; hopefully the regional conference calls would give feedback from many more participants and the models could then be improved considerably.

Notes should be made on these conference calls, and those should also be disseminated to the national migrant legal services community, so that all can benefit from critical thinking.

It may be necessary to have more than one call for all points of view to be adequately expressed and to allow time for careful consideration of the issues raised in this paper.

If, at this point, some migrant programs are interested in any of the models suggested in this paper, those staff should initiate discussions with the appropriate staff in other programs immediately.

3. Further Consideration by the FPG Steering Committee

After the conference calls, the Steering Committee should meet again to discuss whether further activities are needed in order to engage the community in active consideration of these proposals. Further follow-up may be needed with some small state programs, which have not participated in the conference calls.

4. Further Communications from the FPG

The FPG should regularly communicate with all migrant programs regarding this process. A bi-monthly newsletter should be sent, both electronically and by regular mail to all migrant legal services programs to keep them abreast of the issues in the on-going dialogue and to keep new ideas circulating.

5. FPG Facilitation of Discussions Between Programs Interested in the Models

The FPG Steering Committee should facilitate discussions between programs interested in one of the models, if one or more programs request some assistance. The assistance should be only what the programs request.

6. LSC Migrant Conference in March 2000

The concepts addressed in this paper, as they have been further refined by discussion among the community, should be a topic for the LSC Migrant Conference to be held in March of 2000. If any plans are firm, at that time, for any programs to implement any of the models suggested above in the June 2000 RFP's for LSC, those programs should be encouraged to present their preliminary plans to the group at the conference. LSC should be encouraged to view these RFP's favorably.

VII. CONCLUSION

The time is ripe for constructive changes to the delivery system for legal services to migrant farmworkers funded by the Legal Services Corporation. In the last five years, migrant legal services delivery and the migrant farmworker population have changed markedly for reasons beyond the control of migrant legal services advocates. Unfortunately, as we enter the twenty-first century, migrant farmworkers still endure nineteenth century conditions. The difficulties posed by small grants for migrant farmworker legal services to states have been studied for some time and, after twenty years of experience, are the subject of widespread agreement in the migrant legal services community. Clearly, there is a need to build stronger and more stable institutions to sustain the effective delivery of legal services to migrant farmworkers. Too many current statewide migrant legal services grants are too small to enable a program to have the needed critical mass of staff and resources to do the job.

The four models presented in this paper would alleviate the problems caused by sub-critical mass and have the potential for greatly improving the migrant legal services delivery system and the level of job satisfaction among migrant advocates currently working in small programs. The changes proposed are delivery system-driven and would not be immediate or precipitous, although client delivery could see some immediate improvements.

The process proposed allows for careful consideration of the ideas in this paper. The challenge before all the stakeholders in the process is to 1) engage in careful consideration of these ideas, 2) weigh them against a candid assessment of the status quo, and 3) enthusiastically enlist in the effort to either improve these models or create others which will similarly improve the migrant legal services delivery system.

	A	B	C	D	E	F	G
1	State/PR	Population	99 LSC Grant	99 Add. LSC	(Carryover)	99 Non LSC	99 Total
	California	269,004	$ 2,232,645	895005	829846	196625	$ 2,494,629
	Texas	142,930	$ 1,182,317	117923	2923	331128	$ 1,628,445
4	*Florida*	91,825	$ 759,576	500	0	0	$ 760,076
5	*Washington*	74,629	$ 617,331	5000	0	0	$ 622,331
6	*Michigan*	61,544	$ 509,092	24077	6077	0	$ 527,092
7	*Oregon*	56,952	$ 471,107	0	0	0	$ 471,107
8	*North Carolina*	54,798	$ 453,289	112306	112306	10973	$ 464,262
9	Georgia	40,086	$ 331,591	111354	111354	48160	$ 379,751
10	Puerto Rico	29,726	$ 245,893	96624	96624	0	$ 245,893
11	*New York*	28,301	$ 234,105	44828	44828	0	$ 234,105
12	Illinois	25,523	$ 211,126	4000	0	23175	$ 238,301
13	Minnesota	20,456	$ 169,212	3882	1882	151675	$ 322,887
14	South Carolina	20,224	$ 167,293	0	0	0	$ 167,293
15	Idaho	19,111	$ 158,086	25882	25882	22500	$ 180,586
16	*Pennsylvania*	16,946	$ 140,177	154031	154031	0	$ 140,177
17	*Virginia*	16,126	$ 133,394	53659	53659	0	$ 133,394
18	Colorado	15,185	$ 125,610	6920	5000	0	$ 127,530
19	Arizona	15,870	$ 125,569	52665	52665	103500	$ 229,069
20	*Ohio*	12,879	$ 106,535	500	0	107097	$ 214,132
21	New Jersey	12,337	$ 102,052	0	0	0	$ 102,052
22	North Dakota	11,596	$ 98,031	2044	2044	99743	$ 197,774
23	Indiana	11,625	$ 96,162	0	0	0	$ 96,162
24	Wisconsin	9,309	$ 77,004	2331	2331	54956	$ 131,960
25	Maryland	9286	$ 76,897	0	0	0	$ 76,897
	New Mexico	11,823	$ 73,869	31150	0	0	$ 105,019
	Missouri	8,329	$ 68,897	464	0	0	$ 69,361
28	Maine	7,339	$ 60,708	0	0	33784	$ 94,492
29	Arkansas	7,171	$ 59,319	73020	73020	0	$ 59,319
30	Hawaii	7,045	$ 58,285	0	0	0	$ 58,285
31	Utah	6,935	$ 57,366	0	0	0	$ 57,366
32	Tennessee	6,485	$ 53,644	0	0	0	$ 53,644
33	Oklahoma	6,398	$ 52,924	0	0	11485	$ 64,409
34	Mississippi	5,825	$ 48,267	7500	7500	0	$ 48,267
35	Montana	5,581	$ 46,166	0	0	0	$ 46,166
36	Kentucky	4,351	$ 35,991	16700	16700	17000	$ 52,991
37	Nebraska	4,323	$ 35,760	0	0	0	$ 35,760
38	Iowa	3,858	$ 31,913	31294	31294	0	$ 31,913
39	West Virginia	3,738	$ 30,921	43973	43973	0	$ 30,921
40	Alabama	3,364	$ 27,827	3512	3512	0	$ 27,827
41	Louisiana	2,815	$ 23,286	0	0	0	$ 23,286
42	Delaware	2,538	$ 20,994	0	0	0	$ 20,994
43	Connecticut	1,703	$ 14,087	0	0	3557	$ 17,644
44	Massachusetts	1,701	$ 14,071	0	0	0	$ 14,071
45	Wyoming	1,272	$ 10,552	310	310		$ 10,552
46	Kansas	1,215	$ 10,051	0	0	0	$ 10,051
47	New Hampshire	1,017	$ 8,413	0	0	0	$ 8,413
48	Vermont	828	$ 6,849	629	629	0	$ 6,849
	South Dakota	406	$ 3,358	0	0	0	$ 3,358
	Nevada	257	$ 2,126	920	0	125	$ 3,171
	Rhode Island	181	$ 1,497	0	0	0	$ 1,497
52			$ 5,506,697				

Cell: A1
Comment: Mary Lee H:
States in italics have non-LSC migrant legal services program or unit.

Cell: E1
Comment: Mary Lee H:
LSC carryover is deducted from the total funding because of its non-recurring nature.

Cell: G1
Comment: Mary Lee H:
Totals represent an approximation of the resources available from all sources on an annual basis to a program.

Cell: A17
Comment: Mary Lee H:
Virginia 1999 data unavailable except for LSC grant amount. Other data is from 1998.

Cell: A22
Comment: Mary Lee H:
Minnesota receives North Dakota grant.

Cell: A29
Comment: Mary Lee H:
Texas receives Arkansas grant.

Cell: A37
Comment: Mary Lee H:
Nebraska 1999 data unavailable except for LSC grant amount; other data is from 1998.

Cell: A42
Comment: Mary Lee H:
Maryland receives Delaware grant.

Cell: A47
Comment: Mary Lee H:
Maine receives New Hampshire grant.