



CIVIL LEGAL AID FUNDING IN THE TIME OF COVID-19

By Karlee M. Naylor, Anna C. deDufour, and Karen A. Lash¹

As an MIE *Journal* reader, you know painfully well that the pandemic fallout includes dramatic declines in traditional legal aid funding sources in light of decimated interest rates, reduced state and local govern-



Karlee M. Naylor (L); Anna C. deDufour (C); Karen A. Lash (R).

ment appropriations, declining income from court filing fees, and shrinking private funds. At the same time, our programs are experiencing a seismic wave of people desperate for help to prevent evictions and foreclosures, secure unemployment insurance and SNAP, deal with bankruptcy and debt collectors, and escape worsening domestic violence in the wake of the COVID-19 outbreak. And as with so many disasters before this one, the most urgent need is disproportionately concentrated in low-income communities and among people of color.

Policymakers know this pandemic presents a public health emergency and an economic crisis. But more must recognize that a holistic pandemic response requires that legal aid providers stand alongside medical professionals, social workers, community organizers, and other social service providers aiding those in need.

Making this case is essential for the millions of new income-eligible people with civil justice problems, as well as for tapping into the federal funds made available in response to the pandemic. This article describes resources that show the need for legal aid alongside other supportive and social services and where to find them; provides an overview of existing and new

COVID-19-related federal funds available through your state (as well as tribes, territories, and the District of Columbia) and local governments; and closes with some examples and tips from jurisdictions already tapping into these funds to support legal aid.

I. Legal Aid Makes a Difference and Saves Governments Money

Too often, government decision makers are unaware of the critical void in public programs that could be filled by civil legal aid. The Legal Services Corporation's (LSC) most recent Justice Gap Report found that 71 percent of low-income households experienced at least one civil legal problem within 12 months, 86 percent of which received inadequate or no legal help.² Many don't know that civil legal aid, whether delivered by assisted self-help tools, legal information videos, navigators, paralegals, or lawyers providing partial or full representation, improves outcomes for individuals facing many of the legal problems now compounded by COVID-19. That is why civil justice system advocates must educate policymakers and public funders about the research that shows legal aid partners are essential during the pandemic. For example:

- **Housing instability or eviction.** Approximately 30 percent of renters in the United States missed their June rent payments, leaving them vulnerable to eviction or foreclosure once moratoriums are lifted.³ Additionally, evictions have a significantly disproportionate effect on communities of color.

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Pre-pandemic, Black women were evicted at four times the rate of white men,⁴ and nearly half of Black/Latinx renters were unable to pay May's rent compared to 25 percent of white renters.⁵ Compared to tenants without legal help, represented tenants are more likely to remain in their homes,⁶ win or settle their cases,⁷ and receive rent waivers.⁸ If represented tenants cannot remain in their homes, they are often given more time to move compared to those without attorney representation.⁹

- **Domestic violence.** An unintended consequence of stay-at-home orders is an increase in reports of domestic violence among women, children, and LGBTQ+ individuals.¹⁰ Survivors of domestic violence who are represented by an attorney are more likely to obtain protective orders,¹¹ restraining orders,¹² child custody,¹³ and divorces,¹⁴ and experience greater feelings of personal growth and support¹⁵ and improved mental health¹⁶ than individuals who are not represented by an attorney.
- **Health outcomes.** Seniors and people with

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underlying health problems or disabilities are more likely to experience long lasting complications from COVID-19, and the most pervasive health disparities are felt by Black and Latinx individuals.¹⁷ In partnership with existing medical services, civil legal aid can improve access to health care, reduce medical debt, and improve health outcomes.¹⁸

Civil legal aid can also result in savings for state and local governments, a top concern of policymakers facing steep budget cuts to address the economic fallout from COVID-19. For example:

- Recently proposed and right to counsel laws in Baltimore City have projected approximately \$6 in costs avoided for every \$1 invested in free counsel for low-income tenants facing eviction.¹⁹
- Using legal aid to prevent a child from entering foster care can result in millions of dollars in costs avoided annually, in addition to the savings that would result from avoiding the lifelong negative social outcomes of foster care.²⁰
- Medical-legal partnerships result in large returns on investment for health care systems²¹ and simultaneously reduce costs for families by reducing the number of hospitalizations.²²

And that hardly scratches the surface.

There is a growing body of literature forming the evidence base for how legal aid can help resolve our country's most persistent problems, now compounded by COVID-19. Module 1 of The Justice in Government



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Management Information Exchange

105 Chauncy St., Floor 6, Suite 3

Boston, MA 02111-1766

T: 508-737-4010

www.mielegalaid.org | Patricia Pap, Executive Director (ppap@mielegalaid.org)

Project (JGP) Toolkit converts those studies into bite-size summaries with key findings and takeaways in its more than a dozen curated research briefs on specific issues like housing and health outcomes.²³ Taken together with National Legal Aid and Defender Association's Legal Aid Research database,²⁴ it help you bridge the gap between what researchers tell us and what policymakers need to know to ensure legal aid is part of the COVID-19 response.

II. Federal Pass-Through Funding, New and Old, Can Support Civil Legal Aid for COVID-19-Related Problems

Every year, states receive a significant influx of federal funds to advance public policies and programs related to health care, income security, education, employment, social services, and housing, and improve family stability and public safety. Many opportunities to financially support civil legal aid flow from states' powers to administer these block, formula, and open-ended reimbursement grants (also known as "federal pass-through funds"), and are described in JGP's Grants Matrix.²⁵

To help provide a needed infusion of funding into the national economy on March 27, 2020, Congress passed and the President signed into law the \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act aimed at providing relief to individuals, businesses, and government organizations. The CARES Act created new programs and also built on many existing federal pass-through grant programs by appropriating supplemental funding and new flexibilities. In addition, the Office of Management and Budget released a series of memoranda regarding federal financial assistance flexibilities related to COVID-19 that federal agencies should implement for grant applicants and recipients to maximize allowable uses of federal funds to respond to the crisis.²⁶ Many of these CARES Act authorized funds and flexibilities can and have been leveraged to fund civil legal aid and embed it in the pandemic response, and are detailed in JGP/NLADA's COVID-19 Updates on Non-LSC Federal Funding Chart²⁷ and in JGP's Grants Matrix.

For example, the U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG-CV) received an additional \$2 billion to help states, communities, and nonprofits respond to COVID-19 and its impact on the economy and housing, including an additional \$100 million earmarked for Indian CDBG-CV. The CARES Act also removed the usual 15 percent cap on public services (generally

the category used for legal services), making the funds even more flexible for states and local governments to support legal services.²⁸

Some of the CARES Act supplemental funding for existing block grants that allow legal services include U.S. Department of Health & Human Services (HHS) Older Americans Act Title III-B funds, HHS Family Violence Prevention Services Act formula grants (FVPSA), and HHS Community Services Block Grant.

By far, the largest new program established by the CARES Act is the Coronavirus Relief Fund (CRF).²⁹ The CRF provides \$150 billion in direct assistance to states, territories, and tribal governments to navigate the impact of the pandemic, and to cover expenses that:

1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. were not accounted for in the government's budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.³⁰

Through the CARES Act, all states received a minimum \$1.25 billion CRF allocation (the District of Columbia, territories, and tribes received smaller shares), and many large cities directly received CRF allocations carved out of their state's shares.³¹ Given the broad discretion all recipient governments have, many are getting on board to support legal aid for housing preservation, unemployment insurance, debt collection, and other COVID-19 created legal needs, as well as to expand program capacity to deliver services remotely.

III. Examples of Those Tapping Cares Act Funds

JGP's Grants Matrix provides an overview of the many long-standing federal pass-through funds available for legal aid partnerships with state and local governments and includes dozens of examples of legal aid grantees. That precedent now shapes the growing number of states and cities using those pre-existing funds as well as CARES Act pass-through funds for COVID-related civil legal problems, as illustrated by the following examples:

- **Washington State:** Recognizing the devastation that COVID-19 and the resulting economic crisis would have on low-income people, low-wage workers, and others displaced from employment, Washington's Office of Civil Legal Aid (OCLA) took steps to position the civil legal aid system as part

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of the state's comprehensive front-line response. Governor Jay Inslee allocated \$3 million from a state-funded Disaster Response Account and \$2.3 million of CRF for emergency civil legal aid services for COVID-19 affected households.³²

- **Pennsylvania:** The Pennsylvania General Assembly appropriated \$8 million of the state's CRF allocation to fund legal services through the Pennsylvania Legal Aid Network, a consortium of 15 legal services programs covering all of Pennsylvania. This funding will be used to address civil legal needs arising from COVID-19, including domestic violence, homeless assistance, and mortgage and rental assistance.³³
- **Ohio:** Legal Aid Society of Columbus secured \$250,000 in CRF from the City of Columbus to enhance eviction prevention work in Franklin County.³⁴ Legal Aid Society of Cleveland secured \$700,000 in CDBG-CV funds from the City of Cleveland for housing stability efforts with a focus on evictions, and have pending requests with several counties. Legal Aid of Western Ohio received \$100,000 in CDBG-CV funds from the City of Toledo for legal aid for housing cases, including evictions, foreclosures, and termination from subsidized housing program, and in cases to remove barriers to ongoing, stable housing (e.g., debt collection, benefits, unemployment compensation).
- **Illinois:** Prairie State Legal Services received initial awards of \$225,000 in CDBG-CV funds from three counties to handle the surge in eviction cases, as well as a combined \$170,000 from three area agencies on aging of supplemental OAA Title III-B funding to provide legal services for older adults.
- **Michigan:** The Michigan State Bar Foundation and several legal aid programs led an effort to raise awareness among state policymakers about the pandemic-induced civil legal needs of Michiganders. As a result, the state legislature allocated \$4 million in CRF dollars for legal assistance to tenants facing eviction and to participate in a statewide eviction diversion program.
- **Nevada:** Legal Aid Center of Southern Nevada received \$400,000 in CRF from Clark County to run a Small Business Legal Advice Project and to provide advice and counsel any independent contractor or business facing evictions,

garnishments, and other civil legal needs in their court-based Civil Law Self Help Center.

- **Delaware:** Community Legal Aid Society, Inc. received \$100,000 in CDBG-CV funds for legal aid to help prevent or settle landlord/tenant disputes as a result of circumstances relating to the pandemic, and has pending state and county requests for additional funding to ensure tenants beyond that one county receive free legal help with eviction matters.
- **New York:** Legal Assistance of Western New York received \$60,000 in CDBG-CV funds for housing stability/eviction and more than \$70,000 in OAA Title III-B funds from three Area Agencies on Aging for legal aid to seniors.

IV. Tips from Those Tapping Cares Act Funds

For those of you on the front lines working to access existing federal pass-through funds as well as CARES Act supplemental and new grant programs to expand legal services, here are some tips from successful recipients to propel you along the way:

- **Statewide representatives are often the best messengers to state-level agencies and executive branch policy staff.** Statewide entities like OCLA, PLAN, the Michigan State Bar Foundation, and other IOLTA programs and Access to Justice Commissions are uniquely positioned to serve as intermediaries and honest brokers in making the case to state agencies that legal aid is an essential service. That said, in some cases individual legal aid programs who have existing strong relationships with state agency administrators may be just as effective and local programs will generally be best positioned to work with local governments.
- **Collaborate.** Whether at the state or local government level, collaborations — with other legal aid programs, the courts, social service providers, and/or other unlikely allies — to provide more holistic, integrated solutions with broader reach are generally much more likely to get larger grants. Policymakers rightly have a hard time justifying programs that serve some counties but not others. Statewide delivery system models show great promise to raise the overall standard of care through joint provider trainings, data-sharing to better identify statewide patterns and trends, greater collaboration among legal-aid providers, and perhaps most important, extending legal aid to rural areas and communities where it has not been available due to fragmented and limited legal aid funding.

- **Don't wait.** Legal aid is essential to the pandemic response and should share in the federal appropriations pouring into your state. Between the infusion of CARES Act funds and pandemic-related flexibilities with existing federal direct and state-administered pass-through funds, there are many opportunities. Don't wait for an RFP that includes legal aid. Instead, make sure representatives for civil legal aid are at the table when decisions about spending get made.
 - **You don't need to be an expert on the full range of funding streams.** The many funding options described here, in the JGP Grants Matrix, the NLADA/JGP COVID-19 Updates Funding Chart, and on NLADA's Civil Legal Aid Federal Funding Resources website³⁵ can be overwhelming. But you just need to know the basics. When you get the meeting with the right state or local agency administrator or policy advisor to the Governor or Mayor, your job is to explain why legal aid is such an essential partner in addressing the COVID-19 crisis, and that you understand particular funding options — like CRF and CDBG-CV — allow for spending on legal services. You can offer to send additional details (from the above resources) to further your point after the meeting.
 - **Voices for Civil Justice can help with media messaging.**³⁶ Utilizing the media can be an effective way to increase awareness of and propel legal aid pitches forward. For examples of effective legal aid op-eds, see PLAN Executive Director Patrick Cicero's article in the Pennsylvania Capital-Star on the escalation of the financial and legal crisis COVID-19 in Pennsylvania,³⁷ Tzedek DC Executive Director Ariel Levinson-Waldman's article in The DC Line on why the District should fully fund civil legal services to confront the coming tidal wave of debt collection cases,³⁸ a co-authored piece in The Oklahoman about how legal aid is a front-line responder by Legal Aid Services of Oklahoma Executive Director Michael Figgins and Oklahoma Access to Justice Foundation Executive Director Katie Dilks,³⁹ and a co-authored and well-timed piece in the Seattle Times by former Washington State Supreme Court Chief Justice Mary Fairhurst and Seattle Mariners General Counsel Fred Rivera warning how the coronavirus will overwhelm our civil legal aid system.⁴⁰
 - **Remote service delivery is here to stay.** Consider your office's specific needs to improve or expand telework and the myriad ways to make you and your staff more accessible to the people you serve. What technology innovations can help you reach low-income populations remotely during these times? This could include equipment and software needs (e.g., access to databases, videoconferencing, webcams, laptops, scanners, portable printers, WiFi hotspots, subscriptions to Vimeo and Zoom). Now is the time to consider developing a centralized online intake and legal information portal,⁴¹ online document assembly tools and guided interviews, legal information videos, LiveChat functions, and other innovations. The added bonus is these will continue to help provide streamlined, accessible services after there is a vaccine.
 - **Don't be daunted by the Coronavirus Relief Fund's December 30 deadline.** Funds not obligated for pandemic-related costs incurred by December 30 go back to the Treasury Department, and no state or local government wants to tell the Federal government they didn't need the money. You can help them spend those short-term funds for maximum pandemic-response impact. It is challenging to hire and train short-term lawyers/paralegals/navigators/technologists in the best of times, but you surely need some. And we know of no legal aid organization that can't improve on its technology tools (see above bullet).
 - **"Don't be afraid to fail."** Jim Bamberger, OCLA's director and architect of more than \$5.4 million in new funds to respond to the COVID-19 crisis, said it best, "Don't be afraid to fail. Doing nothing is far more harmful than trying and failing. It's like baseball. Even the best hitters hit safely between 2.5 and 3 times out of ten. Keep swinging and swinging and swinging."
- The COVID-19 pandemic has laid bare the country's failure to ensure public and individual health and safety, food security, housing, and job protection, and its tragic and disproportionate impact on low-income individuals and communities of color. It also makes your work even more essential than it was pre-pandemic and the challenge to find creative ways to provide services remotely and innovative funding sources is an absolute imperative. The CARES Act and its new and supplemental appropriations for existing government grant programs are such a source.
- 1 Karlee M. Naylor is a recent graduate of American University's Master of Public Policy program and currently serves as a Research Assistant at The Justice

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in Government Project. Much of her current and previous research has focused on gender-based violence, disability, international community development, and compounding injustice. She received a B.S. in Psychology and Mental Health Interventions from Misericordia University and previously worked at the American Institutes for Research, where she supported several research projects working to eliminate social and employment barriers for people with disabilities. Karlee may be reached at kn6376a@student.american.edu.

Anna C. deDufour is a Master of Public Policy student at American University's School of Public Affairs. She serves as a Research Assistant in both the Justice in Government Project and the Department of Justice, Law, and Criminology. She studies social policy with a focus on U.S. immigration policy, community development, and local public administration. While earning her B.A. in Human Service Studies from Elon University, she evaluated local domestic violence responses, worked in bilingual education, and investigated integrated health care in Ecuador. She currently researches school hate crimes and policing in immigrant communities. Anna may be reached at anna.dedufour.jgp@gmail.com.

Karen A. Lash is currently Practitioner-in-Residence and Director of The Justice in Government Project at the American University Justice Programs Office where she works with state partners to incorporate civil legal aid into government programs when it can improve outcomes, effectiveness, and fairness. She formerly served as a President Obama political appointee in leadership positions with the Office for Access to Justice at the U.S. Department of Justice and as the founding Executive Director of the White House Legal Aid Interagency Roundtable. Karen may be reached at klash@american.edu.

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of a Great Society that he himself envisioned and longed to leave the nation.

The book's final section — *Of Death and Remembrance* — added substantially to my appreciation of the lives of each of these men. While we all may know generally when and how each of the four protagonists died, the author here provides additional information about the future agendas they were working on at their times of passing, and, of particular interest, how each of them measured and felt about how well or poorly they had led and the extent of their contributions to humanity.

Overall, I agree with Brian Jordan, *New York Journal of Books*, that, while *Leadership In Turbulent Times* fails to "prescribe answers for the vexing questions of our own fraught times," let alone to deliver on the cover blurb's promise of "an essential and accessible roadmap for aspiring and established leaders in every field," it definitely does stand as an authentic reminder of the traits and qualities that our nation once prized in its leaders. One can only hope that a sizeable segment of those who read it will have titles like Governor, Senator or Representative.