

NYS Department of State Office for New Americans
Statewide Legal Technical Assistance Request to Support
Immigrant Service Providers in New York State
Request for Applications # 18-ONA-38

The responses to questions included herein are the official responses by the State to questions submitted by potential applicants and are hereby incorporated into RFA # 18- ONA-38 issued on December 12, 2018. In the event of any conflict between the RFA and these responses, the requirements or information contained in these responses will prevail.

Request for Application Amendments

Section V, Required Activities – Part A, #2 is hereby amended to read:

2. Direct Representation

ONA Legal Counsels will provide direct representation to immigrants in select cases related to immigration proceedings using a “universal representation” model that serves any immigrant in need of legal representation who meets geographic eligibility requirements. The target population **for these funds** are resident immigrants in New York **State**; families of mixed status with at least one family member **living in New York State**; and/or immigrant business owners **whose business is located in New York State**. Each ONA Legal Counsel must provide legal representation to a caseload of 15-20 clients at a time.

Immigration legal services provided by the ONA Legal Counsel should include the following cases and services, but not be limited to:

- Deferred Action for Childhood Arrivals (DACA)
- Asylum
- U visas
- T visas
- Temporary Protected Status (TPS)
- Special Immigrant Juvenile Status (SIJS)
- Violence Against Women Act (VAWA)
- Removal proceedings, for those currently detained or not, including those with a prior order of removal
- Work permits
- Bond hearings
- Board of Immigration Appeals (BIA)
- Federal litigation¹

¹ In certain circumstances, the final agency decision of the DOJ can be further litigated in a U.S. circuit court of appeals. Thus, the allowed federal litigation will apply to challenging the following: U.S. Citizenship and Immigration

- Advanced parole
- Family reunification
- Family-based immigration
- Complex naturalization
- Family guardianship

All attorneys that will practice in New York State Family Court must be barred in New York State.

Section VI, Required Activities – Part B, #2 is hereby amended to read:

2. Direct Representation

The ONA Legal Counsel will provide direct representation to immigrants in select cases related to immigration proceedings using a “universal representation” model that serves any immigrant in need of legal representation who meets geographic eligibility requirements. The target population **for these funds** are resident immigrants in New York **State**; families of mixed status with at least one family member **living in New York State**; and/or immigrant business owners **whose business is located in New York State**.

The ONA Legal Counsel, depending on the region served, will carry a minimum caseload of clients which will vary depending on the number of Opportunity Centers that the ONA Legal Counsel is expected to support. Minimum caseloads are as follows:

- Region 8: 12-18 cases
- Region 9: 15-20 cases
- Region 10: 15-20 cases
- Region 11: 15-20 cases
- Region 12: 10-15 cases
- Region 13: 10-15 cases

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- Asylum
- U visas
- T visas
- Temporary Protected Status (TPS)
- Special Immigrant Juvenile Status (SIJS)
- Violence Against Women Act (VAWA)
- Removal proceedings, for those currently detained or not, including those with a prior order of removal
- Work permits
- Bond hearings

Services’ (USCIS) unreasonable delay in adjudicating an application or petition; USCIS’ denial of an application for naturalization; the unlawful detention of someone in immigration custody; a removal order on legal or constitutional grounds.

- Board of Immigration Appeals (BIA)
- Federal litigation²
- Advanced parole
- Family reunification
- Family-based immigration
- Complex naturalization
- Family guardianship

All attorneys that will practice in New York State Family Court must be barred in New York State.

Section V, Required Activities – Part A, #6 is hereby amended to read:

6. Respond to Immigration Law Questions from ONA Opportunity Centers and other immigrant service providers in the assigned region

The ONA Legal Counsels will jointly inform immigrant service providers in the assigned service region that the ONA Legal Counsels are available to address immigration law questions. The ONA Legal Counsel’s contact information will be provided through quarterly e-mail blasts.

When an ONA Opportunity Center or another immigrant service provider from the ONA Legal Counsel’s region contacts the ONA Legal Counsel with an immigration law question, the ONA Legal Counsel **should** respond within three business days. **DOS/ONA will allow some flexibility in extreme circumstances; however ONA Legal Counsel are expected to make a good faith effort to respond within this time frame.**

Section VI, Required Activities – Part B, #6 is hereby amended to read:

6. Respond to Immigration Law Questions from ONA Opportunity Centers and other immigrant service providers in the assigned region

The ONA Legal Counsel will inform immigrant service providers in the assigned service region that the ONA Legal Counsel is available to address immigration law questions. The ONA Legal Counsel’s contact information will be provided through quarterly email blasts.

When an ONA Opportunity Center or another immigrant service provider from the ONA Legal Counsel’s region contacts the ONA Legal Counsel with an immigration law question, the ONA Legal Counsel **should** respond within three business days. **DOS/ONA will allow some flexibility in extreme circumstances; however ONA Legal Counsel are expected to make a good faith effort to respond within this time frame.**

Section VII Eligible costs is hereby amended to add the following to the first paragraph following the bulleted list:

² In certain circumstances, the final agency decision of the DOJ can be further litigated in a U.S. circuit court of appeals. Thus, the allowed federal litigation will apply to challenging the following: U.S. Citizenship and Immigration Services’ (USCIS) unreasonable delay in adjudicating an application or petition; USCIS’ denial of an application for naturalization; the unlawful detention of someone in immigration custody; a removal order on legal or constitutional grounds.

Please note that professional certification fees and professional development, such as bar admission, DOJ application fees, cost to attend CLEs and conferences, are not considered direct activities under this grant; however they can be included in the administrative cost rate.

Section VII Ineligible Expenses is hereby amended to read:

17. Out of State and Foreign travel. Out of state travel will only be considered on a case by case basis and will require prior approval.

Appendix B, Contact Information Sheet is hereby amended to add the following:

By signing below, you certify that you are authorized on behalf of the applicant and its governing body to submit this application. You further certify that all of the information contained in this Application and in all statements, data and supporting documents which have been made or furnished for the purpose of receiving assistance for the project described in this application are true, correct and complete to the best of your knowledge and belief.

Signature

Date

Revised Application Forms will be posted to the DOS website for use in the application.

Questions & Answers

Q1. (Section V, Part A, 1 VI, Part B, 1) Sourcing and hiring multi-lingual, experienced immigration attorneys can be challenging, especially in more remote/rural areas of New York State. One of the ways to address this challenge, while still providing responsible and valuable legal services, is to instead hire recent law graduates who are not yet barred, but who are working towards bar admission as of the date of hire. This not only ensures that more law graduates are trained to provide immigration services thereby increasing the overall number of immigrants who will receive legal services, but it also reduces the attorney “poaching” that is happening across this and other states where immigration lawyers are moving from one agency to another without increasing overall service capacity. In all instances where recent law graduates are hired, this bidder has ensured that they are supervised by barred and experienced immigration attorneys. In order to ensure the most effective delivery of services under this RFA with minimal delay, will DOS kindly amend the RFA to allow contractors to hire recent law graduates who are working towards bar admission provided that, such individuals are to be directly supervised by a staff attorney who (1) is a member in good standing in the bar of the highest court of any state in the country or U.S. territory, and (2) has three or more years of experience as an attorney, two of which is in the practice area of immigration law?

A1. No, the requirements for the ONA Legal Counsel position are outlined as follows in the RFA:

- (1) Be a member in good standing of the bar of the highest court of any state in the country or U.S. territory; and
- (2) Have three or more years of experience as an attorney, including at least two years of immigration law experience or work under the supervision of a senior attorney with three or more years of immigration law experience.

Q2. (Section V, Part A, 2 VI, Part B, 2) Section 2 states that the target population for services includes “families of mixed status with at least one family member with a tie to New York”. Will ONA kindly clarify what a “tie” to New York entails? More specifically, will ONA confirm that services can be provided to individuals and families that are not residents of New York State?

A2. The target population for these funds are resident immigrants in New York State; families of mixed status with at least one family member living in New York State; and/or immigrant business owners whose business is located in New York State. More direction will be provided at the time of contracting.

Q3. Section V, Part A, 6 VI, Part B, 6) Requiring responses to immigration law questions within 3 business days fails to account for ordinary workplace unavailability (e.g. vacation, personal and/or sick days) and client-related deadlines. This is of particular concern in part B of the RFA which only provides for one ONA Legal Counsel. For this reason, we respectfully request that ONA include a “good cause” exception to the “three business days” requirement to allow reasonable delays for time-off and client-related deadlines.

A3. When an ONA Opportunity Center or another immigrant service provider from the ONA Legal Counsel’s region contacts the ONA Legal Counsel with an immigration law question, the ONA Legal Counsel should respond within three business days. DOS/ONA will allow some flexibility in extreme circumstances; however ONA Legal Counsel are expected to make a good faith effort to respond within this time frame.

Q4. (Section V, Part A, 7 VI. Part B, 7) Can DOS please specify what type of programs should be included on the referral list (e.g. other immigration legal service providers, agencies that assist with access to benefits, consulates, etc.)?

A4. At a minimum the referral list should include other free or low-cost immigration legal service providers in the region, State agencies or local non-profit organizations that assist with access to benefits, and consulates. The referral list does not need to be submitted with the application, therefore additional guidance will be provided at the time of contract development.

Q5. (Section V, Part A, 7 VI. Part B, 7) Can DOS add a requirement to share this list – and any updates – with the ONA New Americans Hotline?

A5. ONA will require all grantees to share this list and any updates with the ONA New Americans hotline yearly at a minimum, and whenever there are changes to the list.

Q6.

- **(Section VII, 1, Eligible Costs) This RFA calls for a variety of services to be provided that capture a full spectrum of a typical office workload, however, it appears that only attorneys and their direct supervisors can be accounted for in a budget. However, there are time-consuming services more appropriate for a non-legal staff member, such as a program coordinator (i.e. coordinating and planning legal clinics and immigration seminars and workshops; developing and maintaining a referral list; etc.). Because the RFA does not appear to reimburse for the expense of administrative support staff, successful applicants will be forced to either use the ONA Legal Counsel's time for non-legal functions, or otherwise absorb the cost of administrative expenses through other means.**

Based on the foregoing, we respectfully request that DOS amend the RFP to allow bidders to be reimbursed for proportional salaries and related fringe benefits for administrative support staff.

- **Can law assistants, who support the effort of the Legal Counsel by performing clerical tasks (including opening/closing/updating cases in the office computer system, aiding in drafting correspondence, pleadings, and other documents, answers/responds to incoming calls, etc.) be included as a direct cost?**
- **Will ONA allow funds to be used for paralegal and/or administrative support for the Legal Counsel? If so can these positions assist in coordinating the clinics and presentations?**

A6. Part A of the RFA requires two full-time ONA Legal Counsel dedicating 100% of their time to grant activities and Part B of the RFA requires one full-time ONA Legal Counsel dedicating 100% of their time to grant activities. Any additional funds may be used to fund additional staff, as long as that position is directly providing services as required in the workplan of the contract. Any administrative staffing costs must be included under the administrative cost rate as detailed in Section VII of the RFA.

Q7.

- **Will ONA require itemized receipts from subcontractors? If a subcontractor is providing occupancy and utilities, will they need to submit those receipts, or will an invoice from the subcontractor of total expenses suffice?**
- **Can ONA clarify what financial reporting will look like/be required for subcontractors?**

A7. ONA will require detailed invoices from subcontractors detailing services provided for reimbursement. More information will be provided at the time of contracting.

Q8.

- **What is the difference between RFA38 versus RFA 40? Are we eligible to apply for both?**
- **What is the difference between RFA38 versus RFA 40? Should we apply for both?**

A8. These are applications for separate grants. The ONA Legal Counsel RFA 38 seeks qualified organizations to support one or two immigration attorneys who will provide legal technical assistance to

ONA Opportunity Centers and other immigrant service providers in assigned regions of the State, legal clinics at community-based organizations throughout their assigned regions, direct representation for clients in need of such assistance, and conduct legal seminars and workshops.

The LDP RFA 40 seeks qualified organizations to support one or two immigration attorneys who will provide legal services and direct representation particularly to those at risk for deportation, as well as support to their families, and maintain the capacity to respond to federal immigration enforcement activities in their region of coverage as part of the Liberty Defense Project Regional Rapid Response program.

Eligible applicants may apply for both grants, however the application due date for the LDP RFA (RFA 40) has already passed

Q9. Will a joint application by 2 agencies be considered?

A9. Yes, however one organization must serve as lead applicant. If awarded, the lead applicant will be the grantee with whom the contract will be executed.

Q10.

- **Is there a page limit, character limit, or other formatting requirements for the Narrative or Budget Narrative?**
- **Please confirm that there are no page limits or formatting instructions for the proposal.**

A10. There is no page limit, character limit, or other formatting requirement for the narrative section. Applicants must use the ONA budget template format, included in Appendix D of the RFA for the Budget Section.

Q11. If submitted, will letters of support be considered in the adjudication of the application?

A11. Applicants will be scored solely on the evaluation criteria in Section XII of the RFA.

Q12. If there are sufficient funds remaining in the budget, may the grant fund a part-time or full-time administrative assistant that would dedicate their time to the ONA project?

A12. Yes. If the administrative assistant is working on direct grant activities, i.e. activities in support of the Legal Counsel, that would be funded under direct grant activities. If the administrative assistant is working on administrative tasks, i.e. preparing vouchers, that would be included under the administrative rate funds.

Q13.

- **If there are sufficient funds remaining in the budget, may the grant fund an additional part-time or full-time attorney that would dedicate their time to the ONA project?**
- **The RFA requires a high number of consultations at opportunity centers and in the region throughout the year. Given that this is a universal representation model and attorneys can**

expect to spend some time in court and maintain an active caseload that will require some in-office work, is it possible to put another attorney on the budget who may be able to step in if the Legal Counsel is unable to make a consultation day?

A13. Yes, funds for time spent by an additional part-time or full-time attorney directly on grant activities may be allocated under this grant.

Q14. If there are sufficient funds remaining in the budget, may the grant fund a part-time grants manager that would directly dedicate their time to the ONA project (specifically, ONA data collection & financial reporting)

A14. This could be an allowable expense under the administrative rate funds.

Q15. Part A - In the required “universal model” for direct representation, will ONA attorneys be required to take on direct representation cases beyond their 15-20 client caseload? Or alternatively, once their case list has reached 15-20 active cases, will it be sufficient to provide advice & counsel + a referral until there is room in their case load?

A15. ONA attorneys will not be required to take on direct representation cases beyond the 15-20 required at any time during the contract period. Once the case list has reached 15-20 active cases it will be sufficient to provide advice and counsel and a referral until there is room in the caseload.

Q16. What is considered an “administrative cost”?

A16. Administrative expenses are the expenses that an organization incurs in support of a direct service or an agency-wide activity.

Q17. What costs can be included in “fringe costs”?

A17. Fringe costs are agency specific costs for benefits supplementing an employee’s salary. Fringe rate schedules are developed by employers and used consistently to receive reimbursement for these benefits. Please consult your tax preparer or attorney for additional information. If you do not have a fringe rate formula, you cannot charge for fringe benefits.

Q18. Is an office desk for ONA Legal Counsels an allowable cost?

A18. Allowable equipment is equipment that is directly related to and for dedicated use of the provision of services set forth in the agreement to support program activities. Equipment purchases will only be allowed in the first year of the grant. Applicants should fully justify equipment purchases in their application.

Q19. How does ONA define the difference in budget categories of "Supplies" and "Other Non-Personnel"?

A19. Non-personnel is a major budget category. Supplies is a subcategory and should be included in the non-personnel category.

Q20. What budget line should include unemployment compensation and workers' compensation?

A20. This would be at the discretion of the applicant. If these costs are not included in the applicant's fringe rate, it should be included in the administrative rate cost.

Q21. The RFA instructs that 1 signed original application must be submitted along with the copies. Where on the submitted application should applicants sign the original application?

A21. Attachment 1, Contact Sheet, has been amended to include a place for the applicant to sign. Please see the revised application forms posted on the website and use the revised Contact Information Sheet for Attachment 1.

Q22. Can costs related to oversight by a senior attorney/supervising attorney/managing attorney be included as a direct cost?

A22. Yes, providing this individual is either directly providing services described under required activities in the workplan of the contract or are directly supervising the work of an individual directly providing services described under required activities in the workplan of the contract.

Q23. Can a legal counsel be comprised of 2 attorneys (each at .5 FTE)? For example, if we are going to subcontract with another organization, are we able to split one of the positions?

A23. No, Part A of the grant requires two full-time ONA attorneys dedicating 100% of their time to grant activities. Part B of the grant required one full-time ONA attorney dedicating 100% of their time to grant activities.

Q24. In Section V – Required Activities – Part A; 1. Recruit and hire or repurpose two immigration lawyers to serve as LDP attorneys; 2. Have three or more years of experience as an attorney, including at least two years of immigration law experience or work under the supervision of a senior attorney with three (3) or more years of immigration law experience. To clarify, does the attorney have to have at least three years of experience (with the stipulations noted) or can the attorney have less than three years as long as they are supervised by an attorney with three or more years of immigration law experience?

A24. The ONA Legal Counsel must either have three or more years of experience, two of which include immigration law experience OR if they do not have three years of experience (including two years of immigration law experience), they must work under the supervision of a senior attorney who has three or more years of immigration law experience. Please note this grant will not fund LDP attorneys.

Q25. Since the regions are broken down into smaller sections in the current funding, what would happen if the attorney had previous cases from a county that is not in the region that funding is received for?

A25. Only current ONA Legal Counsel grantees may continue to represent current ONA cases that are outside of the geographic region of the new ONA Legal Counsel contract under this RFA.

Q26. Can an applicant select a region where they already serve eligible clients if the applicant's office is physically located in a different region? I.e. if the applicant's office is in Region 12, can the applicant submit as Region 13 because they already work with clients in that region?

A26. Yes, applicants may select regions if the office is physically located in a different region.

Q27. Will the ONA Legal Counsel's caseloads be restricted to ONA center referrals, or can they include referred cases from the host organization?

A27. Caseloads may include both ONA Center referrals and referred cases from the host organization.

Q28. Is the application submitted exclusively through mail, or can it be emailed? Should the grant be submitted on Grants Gateway in addition to mail or email?

A28. Applications may be hand delivered or submitted through mail to the address listed on the cover page of the RFA. Emailed applications will not be accepted. Applicants should not submit their applications in Grants Gateway.

Q29. Please clarify if there is a specific format you are looking for in Attachment 4: ONA Legal Counsel Qualifications.

A29. There is no specific format for Attachment 4: ONA Legal Counsel Qualifications.

Q30. Could you please clarify the meaning of "caseload?" Is this an obligation for the attorney to take the minimum number of new cases annually or that they are handling the minimum number of cases throughout the year? For example, would the attorney for the Bronx/Staten Island/New York region be required to take on 10-15 new cases annually or simply maintain a caseload of 10-15?

A30. The ONA Legal Counsel would be expected to maintain the minimum number of cases specified by region in the RFA throughout the year.

Q31. Will there be any required training as part of this program?

A31. Yes. The ONA Legal Counsel must join DOS/ONA's monthly webinars and trainings, to connect with state representatives and state resources and establish links beneficial to the creation of this referral list.

Q32. There are 2 clinics in each region that are to be arranged by ONA annually. Do these count for meeting the minimum of 2 outside the zip code of the ONA opportunity center?

A32. All required clinics in the region must be outside of the zip code of the ONA Opportunity Center with the exception of the ONA scheduled events. The ONA scheduled events will count toward the minimum number of clinics required as detailed on page 6 of the RFA, Section V #4.

Q33.

- **Could you please further define/clarify the universal representation model, particularly how it will be implemented and how clients are to be selected for representation?**
- **Can you please define what is meant by Universal representation?**

A33. Under a universal legal representation model, applicants must provide legal services to any immigrant in need of immigration related legal representation, regardless of age, status or income, who meets geographic eligibility requirements. Clients selected for representation will come from ONA Center referrals or referred cases from the host organization. Please refer to the RFA for a list of types of legal services the ONA Legal Counsel should provide

Q34. Unlike under the Liberty Defense Project, the ONA Legal Counsel has never had a set number of questions that have to be answered during legal consultation days since there is no number set it in how many people are scheduled to meet us at the consultation days.

A34. There is no set number of questions that have to be answered during legal consultation days, however, ONA Legal Counsels are expected to provide a legal consultation to all clients scheduled by the Opportunity Center during the legal consultation day.

Q35. How much flexibility will the Legal Counsel have regarding scheduling should a conflict arise from having to make an appearance?

A35. ONA will allow for flexibility on a case by case basis, but expects a good faith effort that ONA Legal Counsel will work with ONA and assigned partners to schedule events at a mutually convenient time.

Q36. How many questions must legal counsel respond to in each calendar year?

A36. The ONA Legal Counsel must respond to all questions received from immigrant service providers in their assigned regions.

Q37. Part B: Are we correct in that there are 30 required consultation days per year in Region 8? And, 20 in region 9?

A37. Each ONA Legal Counsel will be expected to host 10 consultation days at each assigned ONA Opportunity Center per year. In Region 8 where the ONA Legal Counsel supports three Opportunity Centers, the ONA Legal Counsel will be expected to host 30 consultation days a year. In Region 9 where the ONA Legal Counsel supports two Opportunity Centers, the ONA Legal Counsel will be expected to host 20 consultation days a year.

Q38. Are clinics essentially consultation days completed away from an ONA opportunity center?

A38. Yes. Clinics are arranged directly by the ONA Legal Counsel host organization whereas consultation days are arranged by ONA Opportunity Centers.

Q39. The RFA states that Legal Counsel must arrange a place-based legal clinic to process applications and provide consultations in counties throughout the service areas. Will this mean that Legal Counsel will have to locate facilities in which to host a group of people to either process applications or do consultations outside of the ONA centers; will have to ensure that the location is appropriate for holding confidential consultations, that it has a copy machine accessible to Legal Counsel, etc.; will have to advertise the clinic and recruit volunteers to assist? Will any assistance be provided by ONA in terms of the logistics of these clinics?

A39. ONA will provide assistance with “ONA Sponsored” clinics in areas identified by ONA. Other clinics will be coordinated directly by the ONA Legal Counsel host organization.