



MEMORANDUM

TO: Board of Directors
FROM: Helaine M. Barnett
DATE: September 14, 2009
SUBJECT: Management's Recommendation for LSC's FY 2011 Budget Request

Management recommends that the Board of Directors request a total of \$516,550,000 from the Congress for Fiscal Year 2011. The following chart shows the FY 2009 appropriation, the FY 2010 funding request by the Board, the FY 2010 appropriation approved by the House of Representatives, the recommendation of the Senate Appropriations Committee, and the proposed FY 2011 request.

Budget Category	FY 2009 Appropriation	FY 2010 Request	FY 2010 House	FY 2010 Senate	FY 2011 Request
Basic Field	\$365,800,000	\$460,000,000	\$414,400,000	\$374,600,000	\$484,900,000
TIG	\$3,000,000	\$3,400,000	\$3,400,000	\$3,400,000	\$6,800,000
LRAP	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
MGO	\$16,000,000	\$17,200,000	\$17,000,000	\$17,000,000	\$19,500,000
OIG	\$4,200,000	\$4,200,000	\$4,200,000	\$4,000,000	\$4,350,000
TOTAL	\$390,000,000	\$485,800,000	\$440,000,000	\$400,000,000	\$516,550,000

The Need for Basic Field Services

Management recommends that the Board request \$484,900,000 for basic field grants to provide programs with additional resources to address the continuing justice gap while coping with the impacts from the recession and reduced funding from key non-Federal sources.

The Justice Gap

A year ago, this memorandum began with the statement, "Our challenge is large." Today, our challenge is even greater.

LSC-funded programs serve only half of those seeking legal assistance and often must settle for providing many applicants with less than full representation.

About 54 million people—including 18.5 million children—are eligible for LSC-funded services, according to recently released Census data. [Attachment 1] That represents an increase of almost 3 million from 2007 to 2008.¹ The 2008 total is also the highest number of people eligible for civil legal assistance in LSC history and the highest percentage since 1996, Census records show. Analysts said the 2008 poverty figures reflect the initial effects of the recession, and portend even larger increases for 2009 because of high unemployment rates.²

The rise in the number of Americans eligible for LSC-funded services has been exacerbated by the recession. The continuing loss of jobs, loss of homes and loss of health care caused by the recession and the foreclosure crisis have contributed to the demand by existing clients and new applicants for legal help to meet their basic needs.

Data collected by LSC-funded programs for the 2009 Justice Gap Report show a continuing, major gap between the civil legal needs of low-income people and the legal help that they receive. For every client served by a LSC-funded program, one person who seeks help is turned down because of insufficient resources.³

In one category—foreclosures—LSC-funded programs turned away even more eligible clients. For every person helped with a foreclosure action, programs turned away two. Programs also met less than half of the requests for assistance with employment and family law matters in 2008, according to the data.

Since last year's budget request, legal needs studies in Georgia, Indiana and the District of Columbia have been released showing that LSC's "unable to serve" survey underestimates the unmet legal needs of low-income Americans. In Georgia, a state Supreme Court commission found that more than 90 percent of low-income residents with civil legal problems did not obtain legal help.⁴ In Indiana, a report by the state bar association, state bar foundation and the statewide Indiana Legal Services (ILS) shows that ILS was unable to fully serve nearly 75 percent of financially eligible applicants for assistance.⁵

In Washington, D.C., court statistics show that about 98 percent of parties in the family court's domestic violence unit were unrepresented by legal counsel, over 95 percent of parties with benefits issues were unrepresented at administrative hearings and about 97 percent of defendants in landlord/tenant court were unrepresented.⁶

Impact of the Recession

The unprecedented downturn in the nation's economy has led to the highest rates of unemployment in decades and record numbers of foreclosures, putting more families at risk of homelessness. In mid-August, the Federal Reserve signaled that the recession, which began in December 2007, appears to have hit bottom but that "economic activity is likely to remain weak for a time."⁷

Economic data indicates that labor market conditions remain harsh for job-seekers. One-third of the unemployed have been looking for work for 27 weeks or more—the highest

percentage ever recorded in data going back to 1948.⁸ Unemployment is projected to remain high for the next year, peaking at a rate above 10 percent before declining in the middle of 2010, according to the Office of Management and Budget.⁹ These labor market conditions suggest to some economists that many workers will not be called back to work once the economy improves. The longer people are out of work, the more likely they are to spend down savings or lose their homes to foreclosure.¹⁰

More than 1.5 million homes have been lost to foreclosure, and another two million families with subprime loans are delinquent and in danger of losing their homes in the near future. Projections of foreclosures on all types of mortgages during the next five years envision 13 million defaults.¹¹

Many LSC-funded programs have reported a rise in requests for help from low-income Americans facing foreclosure actions.¹² As noted earlier, the 2009 Justice Gap data show that for every client helped on foreclosure, programs turned away two potential clients. Often, low-income individuals and families who rent face imminent eviction because they are the last to know that their landlord is in foreclosure. Foreclosure laws vary by state, and LSC-funded programs are well-suited to help homeowners renegotiate the terms of their loans or assert truth-in-lending protections in court.

Consistent with 2009 Justice Gap data, some LSC-funded programs report high demand for assistance with basic needs related to health, shelter, safety, access to education and employment. For example:

- MidPenn Legal Services of Harrisburg, Pa., has seen a 23 percent increase in all types of cases since the start of this year, primarily because of the recession. Many new clients have lost jobs, lost health care and are at risk of losing their homes. Some are being sued for credit-card debt. Others need assistance obtaining unemployment compensation after being laid off or in filing for bankruptcy.¹³
- The Legal Aid Society of Cleveland is on pace to field more than 900 requests this year for help related to employment law issues. That is a 56 percent increase in demand for employment law help from 2008.¹⁴
- The Georgia Legal Services Program reprioritized case acceptance criteria in mid-2008 because of requests for help with unemployment claims and other public benefits, such as food stamps and Medicaid. Cases involving child support, consumer issues, bankruptcies, utilities and foreclosures also have increased.¹⁵

IOLTA Funds Decline in Numerous States

While the need for civil legal assistance is increasing, the economic downturn has put a great strain on the resources that support legal services.

Interest on Lawyers' Trust Accounts (IOLTA) funds—the second-largest single source of funding (12.7 percent in 2008) for LSC grantees—have dropped significantly because the Federal Reserve dropped the short-term interest rate to virtually zero. In August, the Fed reiterated that it would leave the interest rate unchanged for an extended period.

The impact of the IOLTA erosion varies state by state, but projections suggest that numerous programs will receive less IOLTA funding. Over the 2008-2010 period, for example, the Legal Aid Foundation of Chicago projects a 35 percent decline in IOLTA funds, Legal Aid of North Carolina predicts a 45 percent drop, Neighborhood Legal Services of Los Angeles forecasts a 32 percent drop, and MidPenn Legal Services foresees an 83 percent decrease. Mississippi Rural Legal Services saw its IOLTA funding drop by 88.6 percent for the 2010 grant year that began August 1, compared to its 2009 allocation.

In Maryland, Chief Judge Robert M. Bell anticipates that IOLTA grants will be cut by 20 percent for FY 2010 and, unless there is a turnaround in IOLTA revenue, “more drastic cuts” will be made in FY 2011. That could force the LSC-funded Legal Aid Bureau to close some offices, the judge said in a July 20 letter to Maryland lawyers.¹⁶

Many states may not be able to make up IOLTA losses, in part because state and local budgets for social services are being slashed, shrinking the safety net for the nation's poor. Because of the weak economy, and despite the stimulus from the 2009 American Recovery and Reinvestment Act, at least 48 states have addressed or are facing budget shortfalls in FY 2010.¹⁷

Charitable organizations also will be unlikely to contribute as much to legal aid as in the past. Legal Aid of North Carolina, for example, reports it is in jeopardy of losing a \$400,000 foundation grant that has supported staff attorneys who work on foreclosure cases, often in collaboration with housing agencies.

Closing the Justice Gap

An overwhelming unmet demand already existed for civil legal services before the recession, and closing the justice gap will require a multifaceted approach that will include action by federal, state and local governments, private funders, the organized bar, individual lawyers and others. That means providing more pro bono assistance, developing effective pro se initiatives, securing additional financial assistance from state and local governments and private funders, and enhancing strategic partnerships and collaborations that help meet the civil legal needs of the poor. However, as charged by the Congress, the federal government and LSC must still take the lead in ensuring equal access to justice for all Americans.

Most Americans support federally-funded legal aid to the poor, according to a survey conducted by Harris Interactive on behalf of the American Bar Association. Two-thirds of Americans favor federal funding to help those who need legal assistance, and 88 percent agree that it is essential that a nonprofit provider of legal services is available to help those who could not otherwise afford legal help.¹⁸

The Corporation's 2005 Justice Gap Report called for a doubling of the funds for basic field grants, and the 2009 Justice Gap data points to the same conclusion—that to serve all those currently requesting help from LSC programs would require a doubling of the congressional appropriation, as well as a doubling of non-federal funds.

In November 2008, the Board approved a budget resolution that called for a four-year plan to close the justice gap.¹⁹ Data from the updated Justice Gap report points to the need to double the Basic Field amount in effect when the updated data was collected, which was the FY 2008 appropriation of \$332.4 million. A doubling of that amount would be \$664.8 million, which becomes the goal for the fourth year of the plan.

The first year of the Board's plan is FY 2010. While Congress has not yet acted on the FY 2010 appropriation bill, the mid-point between the House-approved appropriation and the Senate Appropriations Committee proposal for Basic Field for FY 2010 is \$395 million.

A Basic Field FY 2010 appropriation of \$395 million leaves LSC with three years to achieve \$269.8 million in additional funding to meet the goal of \$664.8 million, or about \$89.9 million per year. Adding \$89.9 million to a projected FY 2010 appropriation of \$395 million for Basic Field yields an FY 2011 request of \$484.9 million for Basic Field, which Management recommends to the Board.²⁰

Technology Initiative Grants

Management recommends requesting \$6.8 million for Technology Initiative Grants (TIG) in FY 2011. The House Appropriations Committee has urged LSC to “consider more significant increases to the TIG program,” noting that “it is critical for LSC to identify every possible means to increase the impact of its Federally appropriated dollars.”²¹ Accordingly, Management recommends to the Board a doubling of the FY 2010 funding request for TIG.

The \$6.8 million requested for TIG in FY 2011 would enable LSC to strengthen and expand the technology infrastructures of legal aid programs, expand intake through online systems and expand assistance for unrepresented litigants through the development of additional automated forms.

Since its inception in 2000, TIG has awarded more than \$32.5 million in grants, with more than \$3.3 million awarded in 2009. LSC has been able to attract \$1.2 million from the State Justice Institute to fund TIG projects over the last four years.

Technology plays an increasingly vital role in the delivery of legal services, and LSC encourages programs to take a “research and development” approach in piloting new methods to serve clients and unrepresented litigants. With additional funding, TIG can accelerate this approach. By promoting technology initiatives on a national level, programs avoid implementing projects in isolation. They also develop state and local projects and partnerships, including initiatives with state courts, that can be replicated in other areas and make contributions to national projects that can be used by legal aid programs to increase access to justice. In rural areas, technology can help deliver services more efficiently.

Existing technologies are constantly improving and new technologies are constantly evolving. LSC must keep exploring ways to use them as a tool to expand access to justice, by making self-help systems more available and by making programs more efficient in serving low-income clients. Legal aid programs need to be agile and capable of responding quickly to changing demands for services. This is essential in a good economy, imperative in a weak economy, and vital in a natural disaster or other local emergency.

Herbert S. Garten Loan Repayment Assistance Program

Management recommends \$1 million for the Herbert S. Garten Loan Repayment Assistance Program (LRAP) for FY 2011.

The purpose of the pilot program, started in 2005, was to determine if loan repayment assistance to legal services attorneys would improve the recruitment and retention of high-quality attorneys by LSC grantees through relief of crushing law school debt burdens. LSC's loan repayment assistance program helps mitigate the economic hardships that the combination of high debt and low salaries create for civil legal services attorneys. Now in its fourth year, the program has proved an effective tool in retaining and recruiting civil legal services attorneys. LSC's evaluation of the program demonstrates that loan repayment assistance substantially enhances attorneys' ability to work in legal services and gives programs greater flexibility to recruit and retain staff.

To date, the pilot program has helped a total of 162 attorneys at 46 programs. At its July 2009 quarterly meeting, the LSC Board of Directors agreed with Management's recommendation to continue the LRAP program through FY 2011. Management believes a request for another \$1 million will enable the program to assist 70 more attorneys over a three-year period.

While the Congress authorized the creation of a loan repayment assistance program for civil legal services attorneys through the Department of Education in the Higher Education Act of 2007, the program has not received any funding to date. The House of Representatives did not provide funding for the program for FY 2010, but the Senate Appropriations subcommittee with jurisdiction over the program has recommended \$5 million.²² The Senate has not taken any action on the bill at this time and any differences between the two bills will have to be resolved in a House-Senate conference.

Management and Grants Oversight

Management recommends \$19.5 million for FY 2011 for Management and Grants Oversight (MGO). This increase continues to represent a very low administrative cost (3.8 percent of the total LSC budget request for FY 2011). Grants oversight, one of the Corporation's main functions, represents more than 50 percent of the overall MGO request.

A minimum of \$19 million will be necessary in FY 2011 to continue funding current activities.²³ The Board authorized LSC to establish 15 new positions in FY 2009 based on the increase in funding from Congress for MGO and on the demand for increased grants

oversight from the Government Accountability Office. That hiring, part of a two-year staffing plan, is underway. The \$19 million projected by LSC as needed for FY 2011 includes the annualized cost of these positions plus projected increases in operating expenses.

For FY 2011, as part of LSC's oversight and technical assistance responsibilities, Management proposes to significantly increase the training provided to grantee board members and grantee staff in order to improve board governance, fiscal oversight and other aspects of grantee operations. The proposal is for a \$500,000 addition to the current activity level to accomplish this goal.

In FY 2009, LSC created advisory groups of LSC and grantee staff on local board governance, on fiscal practices, and on private attorney involvement to identify areas for improvement. To follow up on the work of those groups, LSC anticipates in FY 2010 initiating specialized training for grantee boards and staff.

The \$500,000 addition to the FY 2010 activity level that Management proposes for FY 2011 is to increase the training component of its oversight functions and continue to build upon the training activities undertaken in FY 2010. This additional funding will enable LSC to add two positions to support a training unit to develop web-based and in-person training. Specifically, such training will:

- Expand the provision of grantee board member training and dissemination of best practices on board governance and oversight in order to support better prepared and engaged board members who can conduct more informed oversight of their programs;
- Expand grantee staff training on fiscal oversight and management best practices to produce better internal controls and more effective management;
- Expand grantee staff and board training on LSC regulatory compliance requirements;
- Expand grantee staff training on managing private attorney involvement to result in more effective integration into the delivery of legal services;
- Build upon LSC's leadership mentoring pilot project, assisting grantees in the development of leadership development best practices; and
- Coordinate the provision of technical assistance training in such areas as intake design, technology, and program development in an effort to improve grantee performance.

As an additional function, the training unit will promote regional and national discussions on training needs and the delivery of training.

This proposal is consistent with the requirements of the LSC Act and LSC's Strategic Directions 2006-2010. The effort also supports the goals of the Quality Initiative launched by LSC in 2004 and reinforces the importance of training, technical assistance, and the use of best practices in increasing the efficiency and effectiveness of the delivery of high-quality civil legal services.

Office of Inspector General

(This section was prepared by the OIG and included without change.)

The Office of Inspector General (OIG) was established by statute as an independent unit within LSC to promote economy and efficiency and combat fraud and abuse in LSC's programs and operations. The OIG provides objective information to promote good management, informed decision-making, and accountability, contributing to LSC's success in fulfilling its mission. While our work is planned so as to provide comprehensive coverage of LSC programs, in order to respond to current issues and program priorities, as well as to requests from Congress, the Board of Directors, management and the public, we maintain flexibility and discretion to redirect resources – when and where needed – to be a truly timely, relevant and effective resource for the Congress, the Corporation and the American taxpayer.

For FY 2011, the OIG is requesting \$4,350,000 or a 3.6 percent increase over the FY 2010 request level. The OIG request is based on the increased overall LSC funding and the concomitant increase in OIG work-levels and considers expected carryover. At \$4,350,000, the OIG request is less than 1 percent of the total LSC budget request. The FY 2011 request will enable the OIG to continue reviews of LSC operations and help improve LSC's grantee oversight. The OIG will continue to review internal LSC operations identifying opportunities to be more effective and efficient in the carrying out of the LSC mission. The OIG uses a risk-based approach for reviewing grantee operations to help ensure fiscal responsibility and make increased independent and objective information available for grantee competition and management decision-making. Additionally, the funds will support our efforts to help ensure that grantees' independent public accountants' work meets requisite standards and allow the OIG to conduct more fraud vulnerability assessments and briefings, and all necessary criminal and civil fraud investigations.

The current request will enable the OIG to focus its resources on significant and relevant issues and provide timely reporting to LSC and the Congress, thereby, increasing accountability for public confidence in the expenditure of limited LSC funds. The request includes amounts for the requisite annual increases for salaries and benefits for 28 full-time positions, adding one legal counsel and one evaluator/administrator. The additional positions are required based on the OIG's risk-based approach targeting critical program areas and the volume of activity to provide a needed regular OIG presence in the field. The request will enable the OIG to provide assessments on aspects of the nationwide program during fiscal year 2011.

This budget level is necessary for the OIG to adequately perform its core inspector general mission as assigned by the Congress.

Endnotes

¹ In its September 10, 2009 report, the Census Bureau called the 2007-2008 rise in the overall poverty rate the first statistically significant annual increase since 2004.

² “Poverty Rose, Median Income Declined and Job-Based Health Insurance Continued to Weaken in 2008,” Center on Budget and Policy Priorities, September 10, 2009. “Last Year’s Poverty Rate Was Highest in 12 Years,” by Erik Eckholm, The New York Times, September 11, 2009.

³ LSC staff working paper. When published, the 2009 research will update the 2005 LSC report, “Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans.”

⁴ [Civil Legal Needs of Low and Moderate Income Households in Georgia](#). Committee on Civil Justice—Supreme Court of Georgia Equal Justice Commission. June 2009. Page 2.

⁵ [Unequal Access to Justice: A Comprehensive Study of the Civil Legal Needs of the Poor in Indiana](#). Indiana Bar Foundation, et al. June 2009. Page 11.

⁶ [Justice for All?: An Examination of the Civil Legal Needs of the District of Columbia's Low-Income Community](#). District of Columbia Access to Justice Commission. October 7, 2008. Pages 7-8.

⁷ Board of Governors of the Federal Reserve System, Monetary Policy Press Release, August 12, 2009.

⁸ Chad Stone, chief economist, Center on Budget and Policy Priorities, August 7, 2009.

⁹ “Mid-Session Review, Budget of the U.S. Government, Fiscal Year 2010,” Office of Management and Budget, August 25, 2009. “In line with recent recessions, we estimate that job creation will lag economic growth by several months and project that the unemployment rate will peak at a rate above 10.0 percent on a monthly basis before beginning to decline in the middle of 2010,” Pages 2-3 of Mid-Session Review. The unemployment rate rose to 9.7 percent in August, the Labor Department reported on September 4.

¹⁰ “A Recovery That Only a Statistician Can Love: Data That Point to Improving Economy Also Suggest Continued Pain for Many,” Annys Shin, The Washington Post, August 12, 2009.

¹¹ Center for Responsible Lending, testimony by Keith S. Ernst, director of research for the center, to the Joint Economic Committee of the Congress, July 28, 2009. An August snapshot of foreclosure activity by RealtyTrac showed July 2009 foreclosure filings were up 32 percent from the same month in 2008.

¹² “Bankruptcies, Foreclosures Drive People to Legal Aid: Legal Nonprofits in Orange County Report Record High Demand,” by Rachanee Srisavasdi, Orange County (Calif.) Register, April 20, 2009. In a September 1, 2009 e-mail, the Legal Aid Society of Orange County said the demand for civil legal services continues to grow. The program reported a five-fold increase in requests for bankruptcy-related legal services from 2006 to 2009, based on a comparison of similar time periods.

¹³ Rhodia Thomas, executive director, MidPenn Legal Services, July 23, 2009. “We are seeing clients who for lack of a better term we have dubbed “the new poor.” These are folks who a year ago wouldn’t have qualified for services, but because of job loss, in the last year, they are now financially eligible for free legal aid,” Thomas said.

¹⁴ Collen M. Cotter, executive director, Legal Aid Society of Cleveland, August 5, 2009.

¹⁵ Phyllis Holmen, executive director, Georgia Legal Services Program, July 20, 2009.

¹⁶ Letter to Maryland lawyers by Chief Judge Robert M. Bell, Court of Appeals of Maryland, July 20, 2009.

¹⁷ “New Fiscal Year Brings Continued Trouble for States Due to Economic Downturn,” Center on Budget and Policy Priorities, July 29, 2009. Montana and North Dakota did not face budget shortfalls at the start of FY 2010, according to the Center on Budget and Policy Priorities.

¹⁸ “Majority of Americans Hard-Hit by Recession, Stand Firm Behind Federal Funding for Legal Assistance,” American Bar Association, April 20, 2009.

¹⁹ Resolution by LSC Board of Directors, Budget Request for Fiscal Year 2010, adopted November 1, 2008.

²⁰ LSC is continuing to work with the National Association of Indian Legal Services to determine whether the grants formula for Native American funding should be revised.

²¹ House Report 111-149 with H2947, the FY 2010 appropriations bill that includes LSC, June 18, 2009.

²² Senate Report 111-66, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2010, August 4, 2009.

²³ Projection by David Richardson, LSC’s treasurer and comptroller.