

LEGAL SERVICES CORPORATION

Board of Directors Meeting

July 26 - 27, 2012

Location:

SHERATON ANN ARBOR HOTEL

3200 Boardwalk Street
Ann Arbor, MI 48108



Schedule

**LEGAL SERVICES CORPORATION BOARD OF DIRECTORS
MEETING SCHEDULE
JULY 26-27, 2012**

**Sheraton Ann Arbor
3200 Boardwalk
Ann Arbor, Michigan 48108
Tel: 734-996-0600**

THURSDAY, JULY 26, 2012

Start	End	Meeting/Event	Location
1:30pm	3:00pm	<p style="text-align: center;">State Chief Justices Panel <i>Dean Evan H. Caminker</i>, University of Michigan Law School Dean (co-moderator) <i>Dean Martha Minow</i>, Harvard Law School Dean (co-moderator) <i>Chief Justice Mark Cady</i>, Iowa <i>Chief Justice Cornelia Clark</i>, Tennessee <i>Chief Justice Thomas Killbride</i>, Illinois <i>Chief Justice Richard Teitelman</i>, Missouri <i>Hon. Denise Page Hood</i>, U.S. District Court Judge, U.S. District Court for the Eastern District of Michigan</p>	<p>University of Michigan Law School 1225 South Hall 701 South State Street Ann Arbor, MI 48109</p>
3:15pm	4:30pm	<p style="text-align: center;">Domestic Violence Panel <i>Gabriel Campos</i>, New Mexico Legal Aid; Director, Family Law Safety Division <i>Vicky Kimbrell</i>, Georgia Legal Services Program; Director, Family Violence Project <i>Wendy Pollack</i>, Shriver Center, Director, Women's Law & Policy Project <i>Jessica Roulette</i>, Legal Action of Wisconsin; Staff Attorney <i>Rebecca Shiemke</i>, Legal Services of South Central Michigan/Michigan Poverty Law Program; Managing Attorney, Family Law Project and State Support Specialist on Family Law <i>Sotivear Sim</i>, Legal Aid Foundation of Los Angeles; Asian Pacific Islander Unit</p>	<p>University of Michigan Law School 1225 South Hall 701 South State Street Ann Arbor, MI 48109</p>

EMERGENCY CONTACTS:

In the case of an emergency, please contact Rebecca Fertig at (202) 577-6313 or fertigr@lsc.gov or Bernie Brady at (202) 295-1568 or bradyb@lsc.gov

4:30pm	5:45pm	<p>Michigan Panel: State-Wide Collaboration <i>Lorray Brown</i>, Co-Managing Attorney, Michigan Poverty Law Program <i>Bruce Courtade</i>, President-Elect, State Bar of Michigan <i>Robert Gillett</i>, Executive Director, Legal Services of South Central Michigan <i>Bridget Mary McCormack</i>, Associate Dean for Clinical Affairs & Clinical Professor of Law , University of Michigan Law School <i>Margo Nichols</i>, President, Michigan State Bar Foundation <i>Linda Rexer</i>, Executive Director, Michigan State Bar Foundation (Moderator) <i>Deiendre Weir</i>, President and CEO, Legal Aid and Defender Association, Detroit Michigan</p>	<p>University of Michigan Law School 1225 South Hall 701 South State Street Ann Arbor, MI 48109</p>
6:00pm	7:30pm	<p>Pro Bono Awards Reception <u>Guest Speakers</u> <i>Julie I. Fershtman</i>, Michigan State Bar President <u>Awardees</u> <i>Charles Borgsdorf</i>, Legal Services of South Central Michigan <i>Elizabeth Joy Fossel</i>, Legal Aid of Western Michigan <i>Nino E. Green</i>, Legal Services of Northern Michigan <i>Karen Luther</i>, Legal Aid and Defender Association <i>Hon Angela Kay Sberigan</i>, Michigan Indian Legal Services, Inc. <i>Michael R. Stanley</i>, Legal Services of Eastern Michigan</p>	<p>University of Michigan Law School South Hall, Student Lounge 701 South State Street Ann Arbor, MI 48109</p>

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LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

MEETING SCHEDULE

JULY 26-27, 2012

Sheraton Ann Arbor

3200 Boardwalk

Ann Arbor, Michigan 48108

Tel: 734-996-0600

FRIDAY, JULY 27, 2012

Start	End	Meeting/Event	Location
8:30am	9:30am	Governance & Performance Review Committee	Sheraton Ann Arbor Ballroom I & II
9:30am	10:30am	Institutional Advancement Committee	Sheraton Ann Arbor Ballroom III
9:30am	10:45am	Audit Committee	Sheraton Ann Arbor Ballroom I & II
10:45am	12:15pm	Finance	Sheraton Ann Arbor Ballroom I & II
1:30pm	2:45pm	Promotion & Provision Committee Panel Presentation on Grantee Resource Development <i>Jennifer Bentley</i> , Outreach & Development Manager, Legal Services of South Central Michigan <i>Daniel Glazier</i> , Executive Director, Legal Services of Eastern Missouri <i>Steve Gottlieb</i> , Executive Director, Atlanta Legal Aid Society <i>Meredith McBurney</i> , ABA Project to Expand Resources for Legal Services (PERLS) (Moderator) <i>Deirdre Weir</i> , Executive Director, Legal Aid and Defender Association	Sheraton Ann Arbor Ballroom I & II
2:45pm	4:00pm	Operations & Regulations Committee	Sheraton Ann Arbor Ballroom I & II
4:15pm	6:15pm	OPEN Board Meeting	Sheraton Ann Arbor Ballroom I & II

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U. of M. Events - Panelist Bios

Chief Justice Panel

Chief Justice Mark S. Cady, Iowa

Justice Cady was appointed to the Supreme Court in 1998 and was named Chief Justice in 2011. He was born in Rapid City, South Dakota. Chief Justice Cady earned both his undergraduate and law degrees from Drake University. After graduating from law school in 1978, he served as a judicial law clerk for the Second Judicial District for one year. He was then appointed as an assistant Webster County attorney and practiced with a law firm in Fort Dodge. Cady was appointed a district associate judge in 1983 and a district court judge in 1986. In 1994, he was appointed to the Iowa Court of Appeals. He was elected chief judge of the Court of Appeals in 1997.

Chief Justice Cady is a member of the Order of Coif (honorary), Iowa State Bar Association, Iowa Judges Association, and Iowa Academy of Trial Lawyers (honorary). He is the Iowa chair of iCivics Inc. He also served as chair of the Iowa Supreme Court Task Force on the Court's and Communities' Response to Domestic Abuse and the Drake Law School Board of Counselors. Chief Justice Cady is the coauthor of *Iowa Practice: Lawyer and Judicial Ethics* (Thomson-West 2007). He is also the coauthor of *Preserving the Delicate Balance Between Judicial Accountability and Independence: Merit Selection in the Post-White World*, 16 Cornell J.L. & Pub. Pol'y 101 (2008), and the author of *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 Drake L. Rev. 481 (1987).

Chief Justice Cady is an adjunct faculty member at Buena Vista University and serves on the President's Advisory Council. He is married and has two children.

His current term expires December 31, 2016.

Chief Justice Cornelia A. Clark, Tennessee

Cornelia A. Clark received her B.A. degree from Vanderbilt University in 1971, her M.A.T. from Harvard University in 1972, and her J.D. from the Vanderbilt School of Law in 1979.

After graduating from law school, Clark went into private practice until 1989. That year, she joined the 21st Circuit Court. In 1999, Clark was appointed Administrative Director of the Tennessee Courts. She was appointed to the Tennessee Supreme Court in 2005.

She has served as Chief Justice since September 1, 2010. She was elected in August of 2006, and her term ends in 2014.

Hon. Denise Page Hood, U.S. District Court Judge, U.S. District Court for the Eastern District of Michigan

Judge Hood was appointed to the Federal Bench in 1994. Prior to that, she served as the Wayne County Circuit Court Judge from 1993-94; as the Detroit Recorder's Court Judge from 1989-92 and as the 36th District Court Judge from 1983-89. Additionally, Judge Hood worked for the

City of Detroit Law Department from 1977-82. She received her B.A from Yale University and her J.D. from Columbia University School of Law.

Currently, Judge Hood is also the Court's Pro Bono Committee Chair, the Co-Chair of Michigan's State Planning Body and has been on numerous bar and other committees related to access to justice.

Chief Justice Thomas L. Kilbride, Illinois

Thomas L. Kilbride was born in LaSalle. He received a B.A. degree magna cum laude from St. Mary's College in Winona, Minnesota in 1978 and received his law degree from Antioch School of Law in Washington, D.C., in 1981.

Justice Kilbride practiced law for 20 years in Rock Island, engaging in the general practice of law, including appeals, environmental law, labor law, employment matters, and other general civil and criminal matters. He was admitted to practice in the United States District Court of Central Illinois and the United States Seventh Circuit Court of Appeals. He was elected to the Supreme Court of Illinois for the Third District in 2000 and was elected as Chief Justice of the Illinois Supreme Court in October, 2010.

Justice Kilbride is a past board member, past president and past vice-president of the Illinois Township Attorneys Association, a past volunteer lawyer and charter member of the Illinois Pro Bono Center, and a member of the Illinois State Bar and Rock Island County Bar Associations. He has served as volunteer legal advisor for the Community Caring Conference, the charter chairman of the Quad Cities Interfaith Sponsoring committee, volunteer legal advisor to Quad City Harvest, Inc., and a past member of the Rock Island Human Relations Commission.

Chief Justice Richard B. Teitelman, Missouri

Justice Richard B. Teitelman received his B.A. degree from the University of Pennsylvania in 1969 and his J.D. from Washington University in Saint Louis in 1973.

After receiving his law degree, Teitelman spent about six months in solo general practice. Then, from 1975 to 1998, he worked with Legal Services of Eastern Missouri, in a range of positions. He served on the Missouri Court of Appeals from 1998 to 2002.

Teitelman is the current Chief Justice on the Missouri Supreme Court. He was appointed to the Court in February 2002 by Governor Bob Holden, and retained by voters in 2004; his current term ends in 2016.

Domestic Violence Panel

Gabriel Campos, New Mexico Legal Aid; Director, Family Law Safety Division

Gabriel Campos has led New Mexico Legal Aid's (NMLA) domestic violence and sexual assault efforts since 2003. He established the NMLA program that provides a domestic violence attorney in each of the program's 10 offices through a Department of Justice, Office of Violence Against Women grant which NMLA has been able to sustain with funding from the state Children Youth and Families Department with formalized referrals from all domestic violence providers in the state. Mr. Campos has advised the Attorney General's Domestic Violence Unit on policy and best practices relating to victimization, coordinated community response, rural barriers, and civil legal resources and he was part of a multidisciplinary team that developed statewide CLE training materials on best practices for assisting clients with domestic violence. He also worked with the University of New Mexico School of Law to develop a joint Medical School/Law School training program to identify domestic violence issues and coauthored a published paper on the process. He serves or has served on many boards including the New Mexico Parole Board, the Attorney Generals' Family Violence Protection Act Revision Committee, the state Victim's Rights Alliance, Domestic Violence Leadership Commission, Crime Victims Reparation Commission and its Intimate Partner Death Review team. Mr. Campos received his J.D. from the University of Wisconsin School of Law, and M.B.A. from University of New Mexico, and a B.S. in Mechanical Engineering from New Mexico State University.

Vicky Kimbrell, Georgia Legal Services Program; Director, Family Violence Project

Vicky Kimbrell is the Director of the Family Violence Project at Georgia Legal Services Project (GLSP) where she litigates family, juvenile, and health law cases in state and federal trial and appellate courts. She also writes and administers grants that support GLSP's work. Ms. Kimbrell conducts training across Georgia and nationally on family law, domestic violence, and health law issues. She has also contributed to policy development on family and health law issues for women. Ms. Kimbrell worked on the ABA Standards on Representing Victims of Domestic Violence. She has been a member of the state Family Violence Commission for over ten years and previously served on the Georgia Supreme Court's Committee on Justice for Children. She co-founded and was the first co-chair of the Young Lawyer's Division Juvenile Law Committee of the State Bar. She served on the Board of the Georgia School Age Child Care Association and was on the Georgia Medical Advisory Committee. She has written extensively on women's issues, most recently on the intersection of Immigration and Domestic Violence Law for Family Law Attorneys. She received her J.D. from the University of Georgia School of Law.

Wendy Pollack, Director, Women's Law & Policy Project

Wendy Pollack is the founder and director of the Women's Law and Policy Project (WLPP) at the Sargent Shriver National Center on Poverty Law (Shriver Center). Under Wendy's direction, the WLPP draws on the experiences of women and girls and brings those experiences to the forefront in the Shriver Center's analysis of poverty and the development of solutions to end poverty permanently. Wendy has worked

extensively on public benefits and work supports, workforce and economic development, education, employment, family law, violence against women and girls, and other issues affecting low-income people on the local, state and federal level.

For over 20 years, Wendy has worked on matters relating to violence against women and girls, especially as it damages their economic security and advancement. In addition to litigation, this includes administrative and legislative advocacy, such as the Family Violence Option in the 1996 federal welfare act; the federal Violence Against Women Act (VAWA) of 2000, 2005, and the current reauthorization; the Victims' Economic Security and Safety Act (VESSA), an Illinois law which provides the most comprehensive set of employment protections for survivors of domestic and sexual violence in the country; the Safe Homes Act, an Illinois law which provides survivors of domestic and sexual violence living in subsidized and private housing the option to secure their rental housing through lock changes or the termination of their leases if it is unsafe to stay; and implementation of the housing provisions of the VAWA 2005 by the Chicago Housing Authority. Wendy is currently leading a statewide coalition to promote the Ensuring Success in School Initiative to promote the retention, safety and success of elementary and high school students who are parents, expectant parents, or survivors of domestic or sexual violence.

Prior to her move to the Shriver Center in May 1996, Wendy worked on the welfare law team at the Legal Assistance Foundation of Chicago and as a neighborhood staff attorney where she represented clients on a range of issues, including family law and domestic violence, employment, and disability issues. Before becoming a lawyer, Wendy was a union carpenter and with a handful of other pioneers, founded Chicago Women Carpenters in 1979 and Chicago Women in Trades in 1982. Wendy is the editor of *WomanView*, a monthly newsletter on legal issues affecting low income women, now in its sixteenth year of publication. Her most recent Clearinghouse Review article is, *The "Right to Live": Civil Legal Services and Human Rights*, 45 Clearinghouse Review 217 (Special Issue Sept.-Oct. 2011). Recent honors include the Founder's Award from the Chicago Bar Association's Alliance for Women in 2012, the Kutak-Dodds Prize from the National Legal Aid & Defender Association in 2011, and an Impact Award honoree from the Chicago Foundation for Women in 2010. Wendy is a 1989 graduate of Harvard Law School.

Jessica Roulette, Legal Action of Wisconsin; Staff Attorney

Jessica Roulette is a staff attorney in the family law unit of Legal Action of Wisconsin's Milwaukee office. She was born and raised in Milwaukee. She attended Amherst College, where she obtained an undergraduate degree in Russian Studies, cum laude. After graduation, she worked for a year as a litigation paralegal at Cadwalader, Wickersham and Taft in New York.

Attorney Roulette attended law school at the University of Wisconsin, where she graduated in 1996. During law school, she interned in the Public Intervenor's office, worked as a law clerk at Wisconsin's Department of Natural Resources and also served as the Notes and Comments Editor for the Wisconsin International Law Journal.

After graduation, Attorney Roulette worked as a law clerk for the Honorable Lee Jackwig, at that time one of two bankruptcy judges for the Southern District of Iowa. Attorney Roulette then joined the staff

of Legal Action of Wisconsin as a VISTA volunteer in August of 1997. During her time at Legal Action of Wisconsin, Attorney Roulette has worked in the family law unit, served as Project Director of the SeniorLAW division for two years, and worked on a special project providing representation to new fathers in paternity court. Attorney Roulette has spent several years at Legal Action of Wisconsin working with survivors of domestic violence and sexual assault, primarily in family court and restraining order matters.

Rebecca Shiemke, Legal Services of South Central Michigan/Michigan Poverty Law Program; Managing Attorney, Family Law Project and State Support Specialist on Family Law

Rebecca Shiemke is the family law specialist at the Michigan Poverty Law Program (MPLP), a cooperative project of Legal Services of South Central Michigan and the University of Michigan Law School. MPLP is a state-wide program that provides support and training to legal services attorneys and other poverty law advocates in Michigan. Rebecca is also the managing attorney of the Family Law Project, which provides civil legal assistance to survivors of domestic violence. Rebecca is the past co-chair of the State Bar of Michigan Domestic Violence Committee and current member. She is a council member of the State Bar of Michigan's Family Law Section where she is on the executive committee and co-chairs the domestic violence committee. She has been a trainer for the Michigan Domestic Violence Prevention and Treatment Board, the Michigan Coalition Against Domestic and Sexual Violence, the Institute for Continuing Legal Education, the Michigan Judicial Institute and the State Bar of Michigan. She is the co-author of the domestic violence chapter of *Michigan Family Law*, published by the Institute of Continuing Legal Education. Rebecca received her J.D. from Wayne State University.

Sotivear Sim, Legal Aid Foundation of Los Angeles; Asian Pacific Islander Unit

Sotivear Sim is a staff attorney with the Legal Aid Foundation of Los Angeles (LAFLA), Asian/Pacific Islander Community Outreach Unit. He primarily represents domestic violence survivors in the Southeast Asian and South Asian communities in Los Angeles, with their family law, immigration and other related legal matters. Sotivear also engages in outreach efforts to ensure linguistically and culturally appropriate services to the diverse communities LAFLA serves. He is a graduate of the UC Hastings School of Law and began his legal career with Legal Services of Northern California. He returned to his hometown to work at LAFLA because it provided him an opportunity to work with the Cambodian community in Long Beach, CA. Sotivear speaks both Spanish and Khmer.

Michigan Panel on Collaboration

Lorray Brown, Co-Managing Attorney, Michigan Poverty Law Program

Lorray S. C. Brown has been an attorney since 1984 and has been the managing attorney and the statewide consumer law specialist at the Michigan Poverty Law Program (MPLP) since 2001. In her role as the statewide consumer law specialist, she provides litigation, advocacy, and case consultation support in consumer law, support that includes foreclosure prevention and antipredatory lending. In the summer of 2008, Ms. Brown worked at the National Consumer Law Center (NCLC) in Boston as a consumer law fellow. At NCLC, she reviewed and analyzed mortgage documents and coauthored the chapter "Federal, State, and Industry-Led Responses to the Foreclosure Crisis" for "Foreclosure Prevention Counseling" (NCLC 2d ed). Ms. Brown is also the director of the Michigan Foreclosure Prevention Project, a program of MPLP.

Bruce Courtade, President-Elect, State Bar of Michigan

Bruce Courtade is a shareholder with Rhoades McKee. Skilled in civil and commercial litigation, Bruce's practice emphasizes construction law, business disputes and state and federal laws governing fair competition. In 2010, he and his Rhoades McKee partner Paul McCarthy co-chaired a four-week jury trial which resulted in a verdict in favor of his clients for roughly \$7.9 million, which was the highest reported verdict in the State in 2010 and is believed to be the highest verdict in the history of the Kent County Circuit Court. He has been named a "Super Lawyer" in Commercial Litigation every year since 2006.

President-Elect of the 41,500 member State Bar of Michigan, Bruce will assume the State Bar presidency in September 2012.

Bruce received his bachelor's degree from the University of Michigan in 1984 and was president of its 1988 Law School graduating class. Bruce moved to Grand Rapids upon graduation from law school, and joined Rhoades McKee as a shareholder in 2000.

Bruce has lectured extensively on issues related to construction law and litigation throughout West Michigan, for groups such as the Builders Exchange of West Michigan, the American Institute of Architects, the American Society of Professional Estimators, and the Grand Rapids Bar Association. He has also been a frequent guest lecturer to law school classes on ethics and professionalism, and was the keynote speaker at Cooley Law School's "Professionalism in Action" program in April 2011. He also recently appeared as a panelist on a presentation televised by CSPAN as part of a symposium on "Ethics in Our World," broadcast from the Gerald R. Ford Presidential Museum.

Bruce serves on the University of Michigan's Advisory Board on Intercollegiate Athletics, a committee which oversees operations of the Athletic Department in Ann Arbor. In 2010, he received the Alumni Association's Distinguished Alumni Service Award, which is the highest honor that can be awarded by the Association in recognition of outstanding service to the University and its alumni.

A member of the State Bar of Michigan's Board of Commissioners, Bruce also served as Chair of the State Bar's Representative Assembly until his term expired in September of 2001. He is an Attorney Discipline Board panelist, a Fellow of the Michigan State Bar Foundation, and a member of the Board of Directors of the Michigan Supreme Court Historical Society. In addition, he is a past recipient of the John

W. Cummiskey Award, given to one attorney each year in recognition of outstanding pro bono contributions to the citizens of Michigan.

Bruce belongs to the State Bar's Litigation, Negligence Law and Labor and Employment Law Sections. He is also a member of the Federal Bar Association of the Western District of Michigan and a member of the American Bar Association and many of its Sections, including the Litigation Section, the Tort and Insurance Practice Section and the Forum on the Construction Industry.

Robert Gillett, Executive Director, Legal Services of South Central Michigan

Since 1983, Robert Gillett has been Executive Director of Legal Services of South Central Michigan, a nonprofit agency based in Ann Arbor providing civil legal aid to the poor. During his tenure, the program added statewide services and went from an annual budget of \$500,000 to more than \$5 million. In addition, Mr. Gillett is a national and state legal services leader and has been a founder or counsel to groups such as the Washtenaw Housing Alliance, the Washtenaw Health Plan and Avalon Housing. He served as Chair of the National Legal Aid and Defender Association's Civil Policy Group; Chair of the State Bar Pro Bono Initiative; member of the State Bar's Committee on Justice Initiatives, Judicial Crossroads Access to Justice Committee and Access to Justice Campaign Internal Cabinet; and Co-Chair of the Michigan State Planning Body which helps coordinate civil and criminal legal assistance for low-income persons. Mr. Gillett has served on numerous other state and national groups working to improve legal aid for the poor, and he also taught poverty law as a visiting associate professor at the University of Michigan Law School. He has received several awards, including the Michigan State Bar Foundation's Access to Justice Award, the City of Ann Arbor Leadership In Community Development Recognition and the Wilma T. Donuhue Award for Advocacy for Seniors. Mr. Gillett received his B.A. from Kenyon College and his J.D. from the University of Michigan.

Bridget Mary McCormack, Associate Dean for Clinical Affairs & Clinical Professor of Law, UMLS

In addition to serving as associate dean for clinical affairs, Bridget M. McCormack is a clinical professor of law and the co-director of the Michigan Innocence Clinic, a non-DNA clinic representing wrongfully convicted Michigan prisoners. She also has taught criminal law, legal ethics, and in the Michigan Clinical Law Program, a domestic violence clinic, and a pediatric advocacy clinic. Prior to joining the Law School faculty, she was a Cover Fellow at the Yale Law School and taught in Yale's clinical programs. Before that she worked as a staff attorney with the Office of the Appellate Defender and was a senior trial attorney with the Criminal Defense Division of the Legal Aid Society, both in New York City. Professor McCormack has been published in the University of Pennsylvania Law Review, the Georgetown Journal of Legal Ethics, the Tennessee Law Review, and the Windsor Access to Justice Journal. Her current clinical practice, as well as her research and scholarship, focuses on issues surrounding legal ethics and education, wrongful conviction, and issues of clinical pedagogy. She serves on the AALS Committee on Academic Freedom and Tenure. She was awarded the Justice for All Award (with Professor David Moran) by the Criminal Defense Attorneys of Michigan in 2010. In 2011, Professors McCormack and Moran were presented the Patriot Award by the Washtenaw County Bar Association for work upholding American constitutional values. Professor McCormack earned her law degree from New York University School of Law, where she was a Root-Tilden scholar, and her BA with honors in political science and philosophy from Trinity College, Hartford, Connecticut.

Margo Nichols, President, Michigan State Bar Foundation

Margaret (Margo) Nichols has devoted the past 30 years to the pursuit of excellence in the practice of family law. She believes good legal representation is based on a solid relationship of trust and cooperation between an attorney and her clients. Her goal is to resolve family disputes conscientiously and, if possible, amicably, using whatever level of cooperation exists between the partners. In representing her clients, Margo draws on a vast set of legal skills, from structured and informal mediation techniques to an in-depth knowledge of family law and its current practice. A well-recognized practitioner in family law, Margo is a fellow with the American Academy of Matrimonial Lawyers. Margo is a long standing divorce mediator. She is also a family law arbitrator. The Association for Conflict Resolution has granted her Practitioner Membership, its highest accreditation.

Margo is a charter member of the Collaborative Law Institute of Michigan, trained in techniques to foster “no court” divorce and amicable resolution of other family legal matters.

Margo is a past chair of the Family Law Council of the State Bar of Michigan. The Washtenaw County Bar Association (WCBA), and the WCBA Friend of the Court Liaison Committee.

Margo was awarded the Michael Franck Award in 2002 by the State Bar of Michigan’s Representative Assembly and the Patriot Award in 1996 by the Washtenaw County Bar Association. An author of QDROs, EDROs and Retirement Benefits for the Institute of Continuing Legal Education, she has also been a frequent moderator and presenter for its seminars on family law issues.

Active in community organizations, Margo is the President of the Michigan State Bar Foundation and served as past president of the Alzheimer’s Association, South Central Michigan Chapter. In 2003 Margo was appointed by ABA President Dennis Archer to a term on the ABA Commission on IOLTA, renewed for a second term by President Robert Grey, Jr.

Linda Rexer, Executive Director, Michigan State Bar Foundation

Linda Rexer has been the Executive Director of the Michigan State Bar Foundation since 1987 and has directed it in its mission to provide leadership and funding to improve access to justice, particularly through civil legal aid for the poor. During her tenure, the Foundation grew to an entity that awards approximately \$10 million in grants annually. Established in 1947, the Foundation has made more than 1,500 grants and distributed over \$155 million. See www.msbf.org.

Ms. Rexer was a founding member of the State Bar’s Access to Justice Task Force in 1997 and still serves on its successor entity, the Committee on Justice Initiatives for which she has helped lead various subgroups and is currently a member of its Pro Bono Initiative. She also serves on Michigan’s State Planning Body which convenes providers, judges and bar representatives to plan and coordinate civil and criminal legal aid for the poor. She is a member of the Internal Cabinet which oversees the Access to Justice Campaign that raises private donations to support civil legal aid. She served on the State Bar’s Judicial Crossroads Task Force Access to Justice Subcommittee and the State Bar’s Special Committee on Defining the Practice of Law. In 2010, then Chief Justice Marilyn Kelly appointed her as Co-Chair of the statewide Solutions on Self-Help (SOS) Task Force which is charged with implementing actions to promote greater centralization, coordination and quality of support for the self-represented. The State Bar Representative Assembly named Ms. Rexer as the 2005 winner of the Michael Franck Award for her outstanding contributions to the legal profession.

Nationally, Ms. Rexer served on a 15 member American Bar Association Task Force to revise the ABA Standards for Civil Legal Services to the Poor. She also served on the group which produced the Legal Services Corporation's performance criteria used to assess legal aid programs. She is a past Trustee of the National Conference of Bar Foundation and a past President of the National Association of IOLTA Programs (NAIP) whose member programs provide about \$100 million annually for civil legal aid for the poor. She also served on the 9 member American Bar Association Commission on IOLTA and Co-Chaired its national Technical Assistance Committee to assist IOLTA programs throughout the country, its Blue Ribbon Tax Panel and its Joint Rules Task Force to examine revenue enhancement opportunities (all three are joint committees with NAIP). She serves on the Board of the national Management Information Exchange and has served on various committees for the National Legal Aid and Defender Association. She serves on the "Opportunities Gaps" planning committee for the Council of Michigan Foundations. She has also made numerous presentations at state and national trainings and conferences.

Before becoming Executive Director of the Michigan State Bar Foundation in 1987, Ms. Rexer was a managing attorney for a legal aid program in Michigan. She received her undergraduate degree from the University of Michigan in 1971 and her law degree from the University of Notre Dame in 1977. She is admitted to practice law in Michigan and before the U.S. Supreme Court and is a member of the State Bar of Michigan and the American Bar Association.

Deierdre Weir, President and CEO, Legal Aid and Defender Association

Deierdre L. Weir is president and CEO of Legal Aid and Defender Association, Inc., (LAD). She is responsible for the overall administration and management of LAD's six business units. LAD has an annual budget of approximately \$18.5 million and more than 140 full-time employees. Ms. Weir received her Bachelor of Science degree from the University of Michigan, and Masters of Science degrees from the University of California and Central Michigan University. She has also received leadership training through the Nonprofit Leadership Training Program at the University of Michigan, and is a graduate of the Detroit Regional Chamber's Leadership Detroit program. Ms. Weir serves on the Board of Directors of the National Legal Aid and Defender Association, where she serves as Chair of the Leadership and Diversity Committee. She also served as chair of the Civil Policy Group. She is the past vice chair of Michigan's Legal Services Planning Body, and former co-chair of the Michigan State Planning Body. She sits on the board of the Black United Fund, the Minority Organ Tissue Transplant Education Program, and the Plymouth United Church of Christ. She has authored an article titled, "Creating a Management Institute: Better Managers Will Mean Better Service."

*Governance & Performance
Committee*

GOVERNANCE AND PERFORMANCE REVIEW COMMITTEE

July 27, 2012

Agenda

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Staff report on certification letter sent to House and Senate Appropriations Committees
4. Staff report on progress in implementing GAO recommendations
5. Consider and act on other business
6. Public comment
7. Consider and act on motion to adjourn meeting

*Minutes from April 15, 2012
Meeting*

Legal Services Corporation
Meeting of the Governance & Performance Review Committee
Open Session
Sunday, April 15, 2012

DRAFT MINUTES

Chair Martha L. Minow convened an *open session* meeting of the Legal Services Corporation's ("LSC") Governance & Performance Review Committee ("the Committee") at 4:27 p.m. on Sunday, April 15, 2012. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Martha L. Minow, Chair
Sharon L. Browne
Charles N.W. Keckler
Julie A. Reiskin
John G. Levi, *ex officio*

Other Board Members Present:

Father Pius Pietrzyk
Robert J. Grey, Jr.
Laurie Mikva
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Richard Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President
Victor M. Fortuno	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs (OLA)
David Richardson	Comptroller and Treasurer
Jeffrey E. Schanz	Inspector General

Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of Inspector General (OIG)
David Maddox	Assistant Inspector General for Management and Evaluation, OIG
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Carl Rauscher	Director of Media Relations, GRPA
Elizabeth Arledge	Communications Manager, GRPA
Treefa Aziz	Government Affairs Representative, GRPA
John Constance	Former Director, GRPA
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)
Robert Stein	American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Terry Brooks	SCLAID
Ann Carmichael	ABA

The following summarizes actions taken by, and presentations made to, the Committee:

Chair Minow called the meeting to order.

MOTION

Ms. Reiskin moved to approve the agenda. Mr. Keckler seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Mr. Keckler moved to approve the minutes of the Committee's January 20, 2012 meeting. Ms. Reiskin seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Mr. Keckler moved to approve the minutes of the Committee's February 15, 2012 telephonic meeting. Ms. Reiskin seconded the motion.

VOTE

The motion passed by voice vote.

Ms. Aziz gave a report on LSC's progress to implement the GAO recommendations.

Next, the Committee considered the evaluation of two Corporation officers, Mr. Fortuno and Mr. Richardson, for 2011.

Chair Minow invited public comment and received none. There was no new business to consider.

MOTION

Mr. Levi moved to adjourn the meeting. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* meeting of the Committee adjourned at 5:09 p.m.

Certification Cover Letter

April 16, 2012

President

James J. Sandman

Board of Directors

John G. Levi
Chicago, IL
Chairman

Martha Minow
Cambridge, MA
Vice Chair

Sharon L. Browne
Sacramento, CA

Robert J. Grey, Jr.
Richmond, VA

Charles N. W. Keckler
Arlington, VA

Harry J. F. Korrell
Seattle, WA

Victor B. Maddox
Louisville, KY

Laurie Mikva
Evanston, IL

Fr. Pius Pietrzyk, OP
Zanesville, OH

Julie A. Reiskin
Denver, CO

Gloria Valencia-Weber
Albuquerque, NM

The Honorable Barbara Mikulski
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, D.C. 20510

The Honorable Frank Wolf
Chairman
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, D.C. 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, D.C. 20510

The Honorable Chaka Fattah
Ranking Member
Subcommittee on Commerce, Justice,
Science and Related Agencies
Committee on Appropriations
Washington, D.C. 20510

Dear Madam Chair, Ranking Member Hutchison, Mr. Chairman, and Ranking Member Fattah:

Pursuant to the Fiscal Year 2010 Omnibus Consolidated Appropriations Act (P.L. 111-117) reporting requirement for the Legal Services Corporation (LSC), we certify that LSC has concluded action on all of the recommendations from the Government Accountability Office's (GAO) 2007 reports, *Legal Services Corporation: Governance and Accountability Practices Need to be Modernized and Strengthened* (GAO-07-993) and *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight* (GAO 08-37). As we informed you on January 11, 2011, the GAO issued final reports verifying that LSC had fully implemented all the recommendations (see attachments).

To respond to the Senate Appropriations Committee's concerns reflected in the Commerce, Justice, Science and Related Agencies (CJS) FY 2011 appropriations bill, we also certify that LSC has completed all actions with respect to the recommendations in the LSC Office of Inspector General's (OIG) eight selected audit reports referenced in the bill. Enclosed is a memo from the OIG verifying that LSC has implemented all of the recommendations for the following reports:

- Philadelphia Legal Assistance Center (Report No. AU08-04)
- Legal Assistance Foundation of Metropolitan Chicago (Report No. AU08-05)
- Legal Services NYC (AU09-01)
- Legal Aid and Defenders Association (Report No. AU09-02)
- California Indian Legal Services (Report No. AU09-03)
- Audit of Legal Services Corporation's Consultant Contract (Report No. AU09-05)
- Legal Aid of Northwest Texas (Report No. 09-06)
- Legal Services FY 2008 Financial Statement Audit Report

To ensure that LSC operates in the most efficient and effective manner and has a "gold standard" for conducting fiscal oversight, the LSC Board of Directors established a Special Task Force on Fiscal Oversight in July 2010. The Task Force conducted a thorough review of how the Corporation performs fiscal oversight of its grantees and presented its report and recommendations to the Board on August 1, 2011. After receiving the recommendations, the LSC Board sought public comment on the report for a 30-day period. At its quarterly meeting in January 2011, the Board adopted all of the Task Force's recommendations and instructed Management to begin implementation of them. LSC's management team is now in the process of implementing those recommendations.

With respect to the report entitled "Protocol for the Acceptance and Use of Private Contributions to LSC," issued in August 2008 by the Audit Committee of the Board of Directors of the Corporation, LSC did not solicit and did not receive any private contributions in 2010. In 2011, LSC solicited and received one donation of \$12,500 from Friends of the Legal Services Corporation, a non-profit 501(c)(3) District of Columbia corporation, to support LSC's co-sponsorship of the American Bar Foundation's *Access Across America* research project, the first state-by-state portrait of civil legal services in the United States.

Also, in November 2011, the Public Welfare Foundation (PWF) invited LSC to apply for a grant to support planning for the design and implementation of a new outcome-measurement and reporting system for LSC grantees. LSC submitted an application on November 16, 2011, and PWF approved a planning grant for \$17,000 to LSC to convene a meeting of an advisory group to begin the project. In December 2011, the LSC Board adopted a resolution that retroactively approved both of the 2011 solicitations and authorized LSC to take any further actions necessary to accept and complete all of the requirements of the PWF grant.

We appreciate your continued support for LSC and the important work of the 135 LSC-funded programs across the nation. If you have any questions, please do not hesitate to contact Treefa Aziz at (202) 295-1614.

Sincerely,



James J. Sandman
President



John G. Levi
Board Chairman

GAO Recommendation

**GAO Recommendations from June 2010 Report
“Improvements Needed in Controls over Grant Awards & Grantee Program Effectiveness”**

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
1	Develop and implement procedures to provide a complete record of all data used, discussions held, and decisions made on grant applications.	Accepted	<p>Changes to the LSC Grants software program already completed and include:</p> <p>The home page of the LSC Grants review module has been revised to include a listing of grant documents that must be reviewed (if applicable). The final page of the review module requires the reviewer to certify, by entering the reviewer’s name, that all applicable grant documents have been reviewed in completing the grant application evaluation.</p> <p>LSC grants is further revised to include a page for OPP management to use in certifying the meeting(s) held with staff reviewers to discuss data used in the evaluation process, the reviewer’s recommendations, and managements final funding recommendation for the grant Applicant.</p> <p>The evaluation module of LSC grants is also modified to designate certain reviewer data fields as required. Designating fields as required prohibits a reviewer for submitting an application evaluation that is incomplete. As an example, the field that reviewers use to certify that all required grant documents have been reviewed is a required field. Also, data fields linked to particular responses provided in other data fields are designated as required fields.</p>	<p>June 2010</p> <p>August 2010</p> <p>June 2010</p>	<p>Real time observation of LSC Grants</p> <p>Real time observation of LSC Grants</p> <p>Real time observation of LSC Grants</p>	<p>Closed</p> <p>Dec. 2011: GAO in process of formal close out.</p>

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
2	<p>Develop and implement procedures to carry out and document management's review and approval of the grant evaluation and award decisions.</p>	<p>Accepted</p>	<p>The following changes were incorporated for the 2011 grant decision cycle:</p> <p>LSC grants has been revised to include a page for the LSC Vice President for Programs and Compliance and a page for the LSC President to use in certifying the meeting(s) held with OPP and OCE management to discuss the evaluation process, and OPP and OCE management recommendations.</p> <p>The Vice President's page includes a funding recommendation for the grant Applicant and the President's page includes a line for certifying the funding decision for each Applicant. Funding decisions were completed in December 2010.</p>	<p>December 2010</p>	<p>Real time observation of LSC Grants</p>	<p>Closed</p> <p>Dec. 2011: GAO in process of formal close out.</p>
3	<p>Conduct and document a risk-based assessment of the adequacy of internal control of the grant evaluation and award and monitoring process from the point that the Request for Proposal is created through award, and grantee selection.</p>	<p>Accepted</p>	<p>LSC is engaging an outside expert to develop and perform a full evaluation and assessment of the competitive grants process.</p> <p>This will include conducting a risk-based assessment of the internal control of the grant evaluation, award, and monitoring process; recommendations of additional internal control options; recommendations of options for maximizing information reporting capabilities; and a report on internal controls and options implemented.</p>	<p>Ongoing.</p>	<p>Documentation of the risk based internal control assessment of the process and any related risk remediation efforts.</p>	<p>June 2012: LSC has received two bids for consultant services re RFP notice and is in the process of reviewing the applications.</p>

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
4	<p>Conduct and document a cost benefit assessment of improving the effectiveness of application controls in LSC Grants such that the system's information capabilities could be utilized to a greater extent in the grantee application evaluation and decision-making process.</p>	<p>Accepted</p>	<p>LSC implemented the use of the required fields, certifications required by reviewers documenting the review process, and certifications by management and the Executive Office documenting the process for reaching final funding recommendations and funding decisions.</p> <p>LSC Grants will undergo a continuous internal evaluation by staff and management to assess the effectiveness of the control features implemented, and consider additional control feature options.</p>	<p>November 2010</p>	<p>Cost benefits assessment.</p> <p>Real time observation of the required fields, certs etc. in LSC Grants</p> <p>Evidence of the continuous internal evaluation by staff.</p>	<p>Closed</p> <p>Dec. 2011: GAO in process of formal close out.</p>
5	<p>Grantee Oversight Activities</p> <p>Develop and implement procedures to ensure that grantee site visit selection risk criteria are consistently used and to provide for summarizing results by grantee.</p>	<p>Accepted</p>	<p>OPP and OCE Manuals have been revised to include procedures for risk criteria used for selecting grantee site visit. Also, both offices have developed summarized results of the selection process by grantee. Outside labor counsel has reviewed LSC's response.</p>	<p>August 16, 2010</p>	<p>Evidence of outside labor counsel review and implementation.</p>	<p>June 2012: GAO is still reviewing LSC's request for a close out of the recommendation based on the information submitted in April.</p>
6	<p>Establish and implement procedures to monitor OCE grantee site visit report completion against the 120 day time frame provided in the OCE Procedures Manual.</p>	<p>Accepted</p>	<p>OCE has developed an annual tracking document that includes comprehensive information on grantee site visits, and reporting date and issuance (OCE/OPP combined visit list). Outside labor counsel has reviewed LSC's response.</p>	<p>April 2012</p>	<p>Evidence of outside labor counsel review and implementation.</p>	<p>June 2012: GAO is still reviewing LSC's request for a close out of the recommendation based on the information submitted in April.</p>

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
7	Execute a study to determine an appropriate standard timeframe for OLA opinions to be developed and issued. Develop and implement procedures to monitor completion of OLA opinions related to OCE site visits against the target time frame for issuing opinions.	Accepted	Office of Legal Affairs (OLA) issued a new Opinions Protocol that sets forth the procedures and processes to be followed in the development and issuance of both Advisory and Internal Opinions. As part of this effort, OLA implemented appropriate timeframes for response to requests for opinions.	August 20, 2010	Copy of study and new OLA Opinions Protocol. Also, evidence of implementation of the new protocol.	Closed Dec. 2011: GAO in process of formal close out.
8	Develop and implement procedures to provide a centralized tracking system for LSC's recommendations to grantees identified during grantee site visits and the status of grantees' corrective actions.	Accepted	Both OPP and OCE currently monitor recommendations and corrective actions through separate processes in each office. In addition, LSC is building into the LSC Grants system another method for monitoring the status of recommendations and corrective actions from OPP and OCE oversight visits. The system will require grantees to update this information with their annual competition or renewal application submissions to LSC. This information will be used by staff in meeting their oversight responsibilities.	August 2011	Evidence of procedures and implementation of the centralized tracking system for LSC recommendations.	Closed Dec. 2011: GAO in process of formal close out.
9	Performance Management Develop and implement procedures to link performance measures (1) to specific offices and their core functions and activities, and (2) to LSC's strategic goals and objectives.	Accepted	The LSC Board of Directors is developing a new strategic plan for the Corporation which will include linking performance measures to LSC's strategic goals and objectives. LSC is in process of revising its employee performance evaluation system and currently working with the Union on a Job Analysis Questionnaire (JAQ). The JAQ will be completed by all employees – along with revising and updating individual position descriptions – as the first step to	Ongoing	Evidence of procedures and sustainable implementation.	June 2012: Currently in discussions with Union to finalize draft Job Analysis Questionnaire.

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
10	Develop and implement procedures for periodically assessing performance measures to ensure they are up-to-date.	Accepted	LSC will develop and implement procedures to periodically assess performance measures after a new strategic plan is completed.	Ongoing	Evidence of implementation.	June 2012: Awaiting final implementation of new strategic plan.
11	Staffing Needs Assessment Develop and implement procedures to provide for assessing all LSC component staffing needs in relation to LSC's strategic and strategic human capital plans.	Accepted	LSC will develop and implement a human capital plan consistent with the new strategic goals the Board adopts. The information gleaned from the Jobs Analysis Questionnaires (JAQ) will facilitate this effort as it is designed to identify all of the competencies exercised in satisfaction of the duties & responsibilities of each position. This tool will help identify deficiencies and areas in which skills & abilities lag behind the needs of LSC.	Ongoing	Evidence of procedures and their sustainable implementation.	June 2012: Currently in discussions with Union to finalize draft Job Analysis Questionnaire.

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
12	Develop and implement a mechanism to ensure that all LSC staff receives annual performance assessments.	Accepted	<p>LSC is in the process of developing a new performance appraisal system and aims to conduct staff performance assessments covering 2012.</p> <p>As discussed in status updates to GAO recommendations 9 & 11, LSC has drafted a Job Analysis Questionnaire (JAQ), which, along with a revision of position descriptions, will identify core office functions that can be linked to performance measures & strategic goals & objectives.</p> <p>Since the GAO requires two consecutive years of performance appraisals to close out the recommendation, expected completion date is 2014.</p>	Ongoing	<p>Evidence of procedures and their sustainable implementation e.g., most recent actual performance assessments for all OPP and OCE employees.</p> <p>Also list of OPP and OCE staff on board at time of performance assessment cycle.</p>	June 2012: Currently in discussions with Union to finalize draft Job Analysis Questionnaire.
13	<p>Budget Controls</p> <p>Develop and implement a process to monitor contract approvals to ensure that all proposed contracts are properly approved before award.</p>	Accepted	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance. This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	October 2009	Evidence of process design and implementation.	Closed by GAO (10/13/2011)

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
14	Develop and implement procedures for contracts at or above established policy thresholds, to ensure the LSC President provides written approval in accordance with policy before contract award.	Accepted	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance.</p> <p>This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	October 2009	Evidence of procedures and their implementation.	Closed by GAO (10/13/2011)
15	Develop and implement procedures to ensure budget funds are available for all contract proposals before contracts are awarded.	Accepted	<p>Recommendation completed. LSC implemented new Administrative Manual procedures to better monitor contract approvals and ensure that funds are available and all contracts receive appropriate approvals prior to issuance.</p> <p>This policy and practice was in place prior to GAO's completing their fieldwork for this report, and a review of LSC's practices since October 1, 2009 will show that the procedures are being followed and all contracts are now being properly approved.</p>	October 2009	Evidence of sustainable implementation.	Closed by GAO (10/13/2011)
	Internal Control Environment					

No.	Grant Application Processing and Award	LSC Response	LSC Action Plan	Date Documentation Submitted to GAO	Proposed Evidence Needed by GAO (Col. Added by GAO)	Current Status
16	Develop and implement procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight responsibilities.	Accepted	LSC is in the process of developing training procedures for LSC management and staff regarding internal controls to carry out grant award competition and grantee oversight responsibilities.	Ongoing	Evidence demonstrating implementation of procedures for providing and periodically updating training for LSC management and staff on applicable internal controls necessary to effectively carry out LSC's grant award and grantee performance oversight.	LSC in the process of finalizing the training procedures manual and expects to submit it to the GAO by July 31, 2012.
17	Establish a mechanism to monitor progress in taking corrective actions to address recommendations related to improving LSC grants award, evaluation, and monitoring.	Accepted	LSC has established a formal process to monitor and track actions taken by LSC in response to recommendations from the Government Accountability Office. This written procedure identifies the Office of Government Relations and Public Affairs as the office responsible for maintaining the tracking system and includes quarterly reporting on the status of any remediation efforts to the Board of Directors.	October 2010	Evidence of implementation of the monitoring of corrective actions taken to address recommendations related to improving LSC grant award.	Closed Dec. 2011: GAO in process of formal close out.

Total Number of Recommendations: 17

Total Number Closed by GAO: 9

Total Number of Open Items: 8

Updated 06/29/2012

Number of Pending Requests for close-out: 2

*Institutional Advancement
Committee*

INSTITUTIONAL ADVANCEMENT COMMITTEE

July 27, 2012

Agenda

OPEN SESSION

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 15, 2012
3. Discussion of Committee work for August-September
4. Public comment
5. Consider and act on other business

CLOSED SESSION

6. Briefing by Bob Osborne Development Consultant
7. Consider and act on a draft Development Plan for the Corporation
8. Consider and act on motion to adjourn the meeting

*Minutes from April 15, 2012
Meeting*

**Legal Services Corporation
Meeting of the Institutional Advancement Committee
Open Session
Sunday, April 15, 2012**

DRAFT MINUTES

Chairman John G. Levi convened an *open session* meeting of the Legal Services Corporation's ("LSC") Institutional Advancement Committee ("the Committee") at 2:23 p.m. on Sunday, April 15, 2012. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

John G. Levi, Chairman
Martha L. Minow
Robert J. Grey, Jr.
Charles N.W. Keckler
Father Pius Pietrzyk
Herbert S. Garten
Thomas F. Smegal
Frank B. Strickland

Other Board Members Present:

Sharon L. Browne
Julie A. Reiskin
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Richard Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President
Victor M. Fortunato	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs (OLA)
Atitaya Rok	Staff Attorney, OLA
David Richardson	Comptroller and Treasurer

Jeffrey E. Schanz	Inspector General
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Carl Rauscher	Director of Media Relations, GRPA
Elizabeth Arledge	Communications Manager, GRPA
Treefa Aziz	Government Affairs Representative, GRPA
John Constance	Former Director, GRPA
Robert Osborne	Development Consultant, The Osborne Group
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)
Robert Stein	American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Terry Brooks	SCLAID
Julie Strandlie	SCLAID

The following summarizes actions taken by, and presentations made to, the Committee:

The Committee's agenda was approved by motion and vote.

MOTION

Dean Minow moved to approve the minutes of the Committee's January 21, 2012 meeting. Mr. Keckler seconded the motion.

VOTE

The motion passed by voice vote.

Chairman Levi led the discussion of the Committee's 2012 goals. Mr. Osborne, LSC's contracted development consultant, shared observations on the development work he has performed, since it will be the foundation for the Committee's goals.

Chairman Levi then led a brief discussion of the Committee members' self-evaluations.

Chairman Levi invited public comment and received none.

In new business, Mr. Keckler noted that the Board's Operations and Regulations Committee would be considering LSC's contributions policy at its meeting.

MOTION

Dean Minow moved to adjourn the meeting. Mr. Keckler seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* meeting of the Committee adjourned at 2:39 p.m.

DRAFT

Audit Committee

AUDIT COMMITTEE

July 27, 2012

Agenda

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's June 25, 2012 meeting
3. Report on 403(b) annual plan review and update on annual audit
 - Traci Higgins, Director of Human Resources
4. Consider and act on revised Audit Committee charter
5. Briefing by Office of Inspector General
 - Jeffrey Schanz, Inspector General
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

*Minutes from June 25, 2012
Meeting*

Legal Services Corporation
Meeting of the Audit Committee

Open Session

Monday, June 25, 2012

DRAFT MINUTES

Chairman Victor B. Maddox convened an *open session* meeting of the Legal Services Corporation's ("LSC") Audit Committee ("the Committee") at 2:33 p.m. on Monday, June 25, 2012. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Victor B. Maddox, Chairman
Harry J.F. Korrell III
David Hoffman (Non-Director Member)
Paul L. Snyder (Non-Director Member)

Also attending were:

James J. Sandman	President
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President
Victor M. Fortuno	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Katherine Ward	Executive Assistant, Office of Legal Affairs (OLA)
David L. Richardson	Comptroller and Treasurer, Office of Financial and Administrative Services (OFAS)
Jeffrey Schanz	Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General (OIG)
Joel Gallay	Special counsel to the Inspector General, OIG
Ronald "Dutch" Merryman	Assistant Inspector General for Audit, OIG
David Maddox	Assistant Inspector General for Management and Evaluation, OIG

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Page 1 of 2

Ronald “Dutch” Merryman	Assistant Inspector General for Audit, OIG
John Seeba	Director of Audit Operations/Administrative Officer, OIG
Emily Gydesen	Intern, Executive Office
Flor Gardea	Intern, OLA

The following summarizes actions taken by, and presentations made to, the Committee:

Chairman Maddox called the *open session* meeting of the Committee to order.

MOTION

Mr. Korrell moved to approve the agenda. Mr. Snyder seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Mr. Korrell moved to approve the minutes of the Committee’s April 15, 2012 meeting.

Mr. Hoffman seconded the motion.

VOTE

The motion passed by voice vote.

The Committee and the Office of Inspector General had a lengthy discussion over the proposed changes to the Audit Committee charter, and additional edits were presented.

There was no other business to consider.

MOTION

Mr. Snyder moved to adjourn the meeting. Mr. Korrell seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* meeting of the Committee adjourned at 5:10 p.m.

Report on 403(b) Plan



OFFICE OF HUMAN RESOURCES

MEMORANDUM

TO: LSC Audit Committee

FROM: Traci L. Higgins

DATE: July 9, 2012

SUBJECT: LSC 403(b) Thrift Plan – 2nd Quarter 2012 Update; 403(b) Plan Audit Update

Summary of Second Quarter 2012 Thrift Plan Performance: All major indices were down in the second quarter, with the Dow Jones Industrial Average off 2.5%, Standard & Poor's 500 Index down 3.3%, and the Nasdaq Composite losing 5% of its value. As of June 30, 2012, total Thrift Plan assets (including contributions) are approximately \$17,408,098 – a decrease of \$696,000 since March 30, 2012. This quarter saw an usually high level of distribution activity, with five employees accounting for \$925,241 in withdrawals as rollovers, in-service withdrawals and one minimum distribution. The Thrift Plan has 306 active participants (including current and former LSC employees), an increase of ten active participants over the last quarter. Voluntary contributions increased during the quarter by \$49,413.34. Net losses for the quarter totaled \$334,695.

The two funds on our January 2012 watch list - Goldman Sachs' Mid Cap Value A and PIMCO's Total Return fund – continue to perform well, posting year-to-date returns of 8.24% and 6.12%, respectively. Likewise, the rankings of these two funds – 33rd and 5th, year to date - are consistent with their three- and five-year rankings. The two funds on our April watch list – Lord Abbett Value Opportunities and American Funds Capital World Growth and Income – are a mixed bag. American Funds Capital, while off its 11.17% performance of the first quarter, has year-to-date returns of 7.20%. Lord Abbett has posted a second quarter return of -7.17%, down from 9% last quarter. Lord Abbett's ranking for five years is in the top 5 percentile, a more solid long-term picture than its three-month percentile ranking of 83rd. Based on Lord Abbett's recent weak performance, the Plan's financial advisor recommends ongoing performance monitoring. In addition, our advisor is monitoring BMO Small Cap Growth and Prudential Jennison Natural Resources. BMO dropped from returns of 12.86% last quarter to -8.20% for the second quarter, while Prudential registered a steep decline from a return of 5.43% to -15.04%. Likewise, the percentile ranking of each has dipped significantly. The three-month ranking for BMO is 90th, well off its three-year ranking of 21st and its five-year

ranking of 15th, while Prudential Jennison is at the 86th percentile for three-months, down from its three-year ranking of 50th. Because of the strong long term records of both funds, our advisor reports no cause for immediate concern, but he will continue to monitor them.

Target date funds continue to account for the largest percentage of fund assets, with approximately one-third (34.2%) of LSC employees investing in these assets. Nearly another one-third (28.5%) of employees are invested in bond funds or fixed-income (money markets or cash) accounts. Sixty-five percent of Thrift Plan participants (199/306) have elected to invest in the 2015 target fund (\$1,036,032). The AUL Fixed Interest Account only has 51 participants, but with net assets of \$2,139,680, represents the greatest dollar investment of all funds. With only seven investors, the BMO Small Cap Fund has the fewest participants, with total assets of \$43,852.

Recent Market Trends and Related Economic Indicators: Through the close of May 2012, the total return during the second quarter was negative for 21 of 25 of our funds (excluding the two fixed/cash products). The total return year-to-date was positive for 24 of 25 funds, ranging from a low of 1.19% (Lord Abbett) to a high of 14.94% (Nuveen Real Estate). Of the 24 funds in positive territory for the year, one was below a 3.5% return year-to-date, two were in the 3.6% - 5% range, eight were in the 5.1% - 7% range, nine were in the 7.1% - 9% range, three were in the 9.1% - 11% range, and one fund (Nuveen Real Estate) was over 14% (14.94%). This is a departure from last quarter when fifteen (15) funds had returns in the 5% - 11% range and seven (7) in the 12% - 15% range.

The second quarter of 2012 has seen 10-year Treasury interest rates decrease from 2.2% to 1.65% and the 30-year Treasury interest rate decrease from 3.3%¹ to 2.75%.

403(b) Plan Audit Update: The 403(b) plan audit is currently under way for plan year 2011. The initial audit schedules have been forwarded to plan auditor Dixon Hughes Goodman LLP and include all requested relevant plan documents, amendments and resolutions, plan testing results, participant contribution and distribution reports and payroll reconciliation documentation. The next phase of the audit is derived from the Payroll Census (YTD Payroll Register) of employees paid during the year. From this report, the auditor will select samples for eligibility testing to ensure compliance with the plan document. Other samples will be requested to conduct the following tests: Participant Contributions Test, Participant Investment Allocation Test, Participant Distributions Test, Participant Loans Test and Participant Rollover Test. Other samples could be requested based on the outcome of these tests.

AUL automatically files an extension for LSC's 5500 Annual Tax Return/Report to allow adequate time for the completion of the audit. With the extension, the deadline is October 15, 2012. The audit report is filed with the 5500. AUL is currently working to complete the 5500 and upon completion will send a draft copy to the auditor for review.

Please let me know if you have any questions or require additional information.

¹ The Treasury rate refers to the current interest rate that investors earn on debt securities issued by the U.S. Treasury. The federal government borrows money by issuing U.S. Treasury bills, notes and bonds.

Audit Committee Charter

**CHARTER OF THE
AUDIT COMMITTEE OF
LEGAL SERVICES CORPORATION**

I. Establishment

On March 24, 2008, the Board of Directors (“Board”) of the Legal Services Corporation (“LSC” or “Corporation”) established, as a standing committee of the Board, a committee to be known as the Audit Committee (the “Committee”), and adopted this as the Committee’s Charter.

II. Purposes

The purpose of the Committee shall be to assist the Board in fulfilling its responsibility to ensure that the Corporation’s assets are properly safeguarded; to oversee the quality and integrity of the Corporation’s accounting, auditing, and reporting practices; and to perform such other duties as assigned by the Board.

III. Membership

The Chairman of the Board (“Chairman”) shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman shall appoint the Chair of the Audit Committee from among these Directors. Three Committee members will be required in order to constitute a quorum. No member of the Committee may be an officer or employee of the Corporation. To the extent practicable, Members of the Committee should have at least a basic understanding of finance and accounting, be able to read and understand fundamental financial statements, and understand the Corporation’s financial operations and reporting requirements.

IV. Terms

Members of the Committee shall serve for a term of one year, or until their earlier resignation, replacement or removal from the Committee or Board.

V. Meetings

The Committee:

- (1) shall meet at least four times per calendar year, but may meet more frequently at the call of any member of the Committee;
- (2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation’s Bylaws, or the laws to which the Corporation is subject.

VI. Resources

All offices, divisions and components of the Corporation (“Management”), including the Office of Inspector General (“OIG”) shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.

VII. Authority

The Committee:

- (1) unless otherwise directed by the Board, shall oversee the selection and retention of the external auditor (“External Auditor(s)”) by the Inspector General (“IG”) of the Corporation;
- (2) shall have unrestricted access to the Corporation’s books, records, facilities, personnel, and External Auditor(s);
- (3) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee’s purposes or as may be directed by the Board from time to time;
- (4) may delegate authority to one or more designated members of the Committee;
- (5) may rely on the expertise and knowledge of Management, the OIG, External Auditor(s), and such consultants and experts that the Board approves for carrying out its oversight responsibilities;
- (6) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and
- (7) may require any person, including the External Auditor or any officer or employee of the Corporation, to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VIII. Duties and Responsibilities

The Committee:

- (1) shall review with Management, the OIG, and the Corporation’s External Auditor(s) the contemplated scope and plan for LSC’s required annual audit;
- (2) shall review and discuss with the External Auditor(s), the OIG, and Management the annual audit report and results of the External Auditor’s year-end audit, including any problems or difficulties encountered by the

External Auditor(s); the OIG and the Management's response to any audit findings, and any areas of significant disagreement between Management, the OIG, and the External Auditor(s); and any recommendations of the External Auditor(s);

- (3) shall in concert with the OIG annually review and confirm the independence of the External Auditor(s);
- (4) shall review with the OIG its internal audit responsibilities, sanctions, and performance; its internal audit plan and the risk assessment that drives its internal audit plan; and the effectiveness of its internal audit plan and activities;
- (5) shall consult with the IG as to an appropriate approach regarding communications and meetings between the Committee and the OIG;
- (6) shall confirm the existence of appropriate monitoring of LSC's internal controls preventing or disclosing activities prohibited by statute, regulations or applicable circulars of the Office of Management and Budget;
- (7) shall, in conjunction with the Board's Finance Committee, review, monitor, and evaluate the effectiveness and execution of the Corporation's policies and procedures with respect to identifying and managing financial and other risk exposures, and to assess the steps Management has taken to identify and control such risks to the Corporation;
- (8) shall review Management representation letters or certifications and the LSC Finance Committee chairperson's letters or certifications regarding the contents, accuracy, or completeness of financial reports, as appropriate;
- (9) shall establish procedures for the receipt, retention, and treatment of complaints or expressions of concern regarding accounting, internal controls and auditing issues, and which procedures should provide for the anonymity and confidentiality of such communications from employees;
- (10) shall review and discuss with the OIG all significant matters relative to their financial audits and conduct of financial audits performed by the OIG, including any problems the OIG encountered while performing their audits;
- (11) shall ensure that significant findings and recommendations made by the OIG and External Auditor(s) are addressed and, where appropriate, implemented by Management and/or the Board on a timely basis;
- (12) shall report to the Board at least twice per calendar year and on such other occasions as requested to do so by the Board;

- (13) shall review all regulatory and internal control matters that may have a material effect on the Corporation's financial statements;
- (14) shall periodically assess the Committee's performance under the Charter, reassess the adequacy of the Charter, and report to the Board the results of the evaluation and any recommendations for proposed changes to the Charter;
- (15) shall review any significant deficiencies in internal control over financial reporting identified by Management, the IG, or the External Auditor(s) and ensure that corrective action is taken by Management; and
- (16) shall perform such other duties, consistent with this Charter, as are delegated to the Committee by the Board.

IX. Limitations

- (1) Nothing contained in this Charter is intended to expand the applicable standards of liability under statutory or regulatory requirements for the Board or its Directors.
- (2) Members of the Committee are entitled to rely on the expertise, knowledge, and judgment of Management, the Inspector General, and the External Auditor(s) and any consultant or expert retained by them. The Committee's responsibilities are not to be interpreted as a substitute for the professional obligations of others.
- (3) It is not the duty of the Committee to conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles, generally accepted government auditing standards (the "Yellow Book") and other applicable rules, regulations, guidelines and instructions. These are the responsibilities of the OIG, the External Auditor(s) and Management.
- (4) Nothing contained in this Charter shall be construed as circumscribing the authority of the Inspector General under the Inspector General Act or is intended to restrict the authority of the Inspector General to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation.

Blue Lined Version

**CHARTER OF THE
AUDIT COMMITTEE
OF
LEGAL SERVICES
CORPORATION**
As Amended, xx, 2012

I. Establishment

On March 24, 2008, the Board of Directors (“Board”) of the Legal Services Corporation (“LSC” or “Corporation”) established, as a standing committee of the Board, a committee to be known as the Audit Committee (the “Committee”), ~~and adopted this as the Committee’s Charter.~~

II. Purposes

The purpose of the Committee shall be: (1) to assist the Board in fulfilling its responsibility to ensure that the Corporation’s assets are properly safeguarded; and to oversee the quality and integrity of the Corporation’s accounting, auditing, and reporting practices; and (2) to perform such other duties as assigned by the Board.

III. Membership

The Chairman of the Board ~~–(“Chairman”)~~ shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman shall appoint the Chair of the Audit Committee from among these Directors. The Board may appoint non-Directors as members of the Committee. Three Committee members will be required in order to constitute a quorum. No member of the Committee may be an officer or employee of the Corporation. To the extent practicable, ~~members~~ Members of the Committee should have at least a basic understanding of finance and accounting, be able to read and understand fundamental financial statements, and understand the Corporation’s financial operations and reporting requirements.

IV. Terms

Members of the Committee shall serve for a term of one year, or until their earlier resignation, replacement or removal from the Committee or Board.

V. Meetings

The Committee:

- (1) shall meet at least four times per calendar year, but may meet more frequently at the call of any member of the Committee; and

- (2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation's Bylaws, or the laws to which the Corporation is subject.

VI. Resources

All offices, divisions and components of the Corporation ("Management"), including the Office of Inspector General ("OIG") shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.

VII. Authority

The Committee:

- (1) unless otherwise directed by the Board, shall oversee the selection and retention of the external auditor ("External Auditor(s)") by the Inspector General ("IG") of the Corporation including the confirmation of the independence of external auditor;
- (2) shall have unrestricted access to the Corporation's books, records, facilities, personnel, and External Auditor(s), except with regard to confidential information in the possession of the OIG that it is prohibited by law from sharing with the Board;
- (3) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee's purposes or as may be directed by the Board from time to time;
- (4) may delegate authority to one or more designated members of the Committee;
- (5) may rely on the expertise and knowledge of Management, the OIG, External Auditor(s), and such consultants and experts that the Board approves for carrying out its oversight responsibilities;
- (6) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and
- (7) may require any person, including the External Auditor or any officer or employee of the Corporation, to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VIII. Duties and Responsibilities

[A. Audits and Audit Related Matters](#)

The Committee shall:

- (1) ~~shall~~ review and discuss with Management, the OIG, and the Corporation's External Auditor(s) the contemplated scope and plan for LSC's required annual audit;
- (2) ~~shall~~ review and discuss with the External Auditor(s), the OIG, and Management the annual audit report and results of the External Auditor's year-end audit, including any problems or difficulties encountered by the External Auditor(s); ~~any response by Management or the OIG to any audit findings~~ the OIG and the Management's response to any audit findings, and any areas of significant disagreement between Management, the OIG, and the External Auditor(s); and any recommendations of the External Auditor(s);
- (3) ~~shall in concert with the OIG, annually review and confirm the independence of the External Auditor(s);~~
- (34) ~~shall~~ review and discuss with the OIG its ~~internal~~ audit responsibilities, ~~sanctions~~, and performance; its ~~internal~~ audit plan for the Corporation and the risk assessment that drives its ~~internal~~ audit plan; and the effectiveness of its ~~internal~~ audit plan and activities; and provide the OIG with any recommended audits that would assist the Committee or the Board of Directors;
- (45) ~~(10) shall~~ review and discuss with the OIG all significant matters relative to ~~their financial audits and conduct of financial~~ audits performed by the OIG, including any problems the OIG encountered while performing their audits;
- (56) ~~(11) shall ensure that~~ review and discuss with Management and/or the Board the Corporation's response to and, where appropriate, timely implementation of, significant findings and recommendations made by the OIG and External Auditor(s) ~~are addressed and, where appropriate, implemented by Management and/or the Board on a timely basis; and~~
- (67) review and discuss with Management any internal audit or review activities, including its audit or review plan, its audit or review summary reports, and the performance of those portions of Management that perform audits or reviews.

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B. Financial Reporting:

The Committee shall:

- (1) ~~(8) shall~~ review Management representation letters or certifications and the LSC Finance Committee chairperson's letters or certifications regarding the contents, accuracy, or completeness of financial reports, as appropriate
- (2) ~~(13) shall~~ review all ~~regulatory and internal control matters~~ issues identified and brought to the Committee's attention by Management, the OIG, the GAO or the External Auditor that may have a material effect on the Corporation's financial statements; and
- (3) ~~(15) shall~~ review any significant deficiencies in internal control over financial reporting identified by Management, the OIG, or the External Auditor(s) and ensure that corrective action is taken by Management.

C. Risk Management

The Committee shall:

- (1) review LSC's system of internal controls that are designed to minimize the risk of fraud, theft, corruption, or misuse of funds, including by receiving information:
 - a. from Management about whether internal controls performed by Management are operating properly;
 - b. from OIG about whether its investigations function, audit function, and compliance function are operating properly; and
 - c. from Management and OIG about whether there is proper coordination and communication between them regarding their respective operations designed to minimize the risk of fraud, theft, corruption, or misuse of funds;
- ~~(1) review LSC's system of internal controls that are designed to minimize the risk of fraud, theft, corruption, or misuse of funds, which review shall be conducted by receiving information about whether (a) internal controls performed by Management and the OIG (including investigations, audits, and compliance activities) are functioning properly, and (b) coordination and communication between the OIG and Management regarding internal control functions are occurring properly;~~
- ~~(6) shall confirm the existence of appropriate monitoring of LSC's internal controls preventing or disclosing activities prohibited by statute, regulations or applicable circulars of the Office of Management and Budget;~~
- ~~(7) shall, in conjunction with the Board's Finance Committee, review, monitor, and evaluate the effectiveness and execution of the Corporation's policies and procedures with respect to identifying and managing financial and other risk exposures, and to assess the steps~~

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~~Management has taken to identify and control such risks to the Corporation;~~

- (2) = ensure that its review of the OIG's investigations function occurs in a manner that does not compromise the OIG's independence or the confidentiality of its investigations;
- (3) = ~~(5) shall~~ consult with the ~~IG~~ Inspector General as to an appropriate approach regarding communications and meetings between the Committee and the OIG;
- (4) = review any concerns expressed regarding any impediments to the independence of the OIG ~~in order to help ensure that the OIG remains independent as provided by law, including the provisions of the Inspector General Act;~~
- (5) ~~(9) shall establish~~ confirm that there is a proper confidential mechanism in place for individuals to make complaints, anonymously if desired, regarding suspected fraud, theft, corruption, or misuse of funds, or problems involving internal controls, auditing, or accounting, and that there are proper procedures in place for the receipt, retention, and treatment handling of such complaints or expressions of concern regarding accounting, internal controls and auditing issues, and which procedures should provide for the anonymity and confidentiality of such communications from employees; and
- (6) review LSC's efforts, ~~by Management and/or the OIG,~~ including training and education efforts, to help ensure that LSC employees and grantees act ethically and safeguard LSC funds.

D. Other Duties and Responsibilities

The Committee shall:

- (1) ~~(12) shall~~ report to the Board at least ~~twice~~ four times per calendar year and on such other occasions as requested to do so by the Board;
- (2) ~~(14) shall~~ periodically assess the Committee's performance under the Charter, reassess the adequacy of the Charter, and report to the Board the results of the evaluation and any recommendations for proposed changes to the Charter; and
- (3) ~~(16) shall~~ perform such other duties, consistent with this Charter, as are ~~delegated~~ assigned to the Committee by the Board.

IX. Limitations

- (1) Nothing contained in this Charter is intended to expand the applicable standards of liability under statutory or regulatory requirements for the Board or its Directors.
- (2) Members of the Committee are entitled to rely on the expertise, knowledge, and judgment of Management, the Inspector General, and the External Auditor(s) and any consultant or expert retained by them. The Committee's responsibilities are not to be interpreted as a substitute for the professional obligations of others.
- (3) It is not the duty of the Committee to conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles, generally accepted government auditing standards (the "Yellow Book") and other applicable rules, regulations, guidelines and instructions. These are the responsibilities of the OIG, the External Auditor(s) and Management.
- (4) Nothing contained in this Charter shall be construed as ~~limiting~~circumscribing the authority of the Inspector General under the Inspector General Act or is intended to restrict the authority of the Inspector General to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation.
- (5) Nothing contained in this Charter shall be construed as authorizing the Committee to exercise the powers of the Board of Directors.

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**CHARTER OF THE
AUDIT COMMITTEE OF
LEGAL SERVICES CORPORATION
As Amended, xx, 2012**

I. Establishment

On March 24, 2008, the Board of Directors (“Board”) of the Legal Services Corporation (“LSC” or “Corporation”) established, as a standing committee of the Board, a committee to be known as the Audit Committee (the “Committee”).

II. Purposes

The purpose of the Committee shall be: (1) to assist the Board in fulfilling its responsibility to ensure that the Corporation’s assets are properly safeguarded and to oversee the quality and integrity of the Corporation’s accounting, auditing, and reporting practices; and (2) to perform such other duties as assigned by the Board.

III. Membership

The Chairman of the Board (“Chairman”) shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman shall appoint the Chair of the Audit Committee from among these Directors. The Board may appoint non-Directors as members of the Committee. Three Committee members will be required in order to constitute a quorum. No member of the Committee may be an officer or employee of the Corporation. To the extent practicable, members of the Committee should have at least a basic understanding of finance and accounting, be able to read and understand fundamental financial statements, and understand the Corporation’s financial operations and reporting requirements.

IV. Terms

Members of the Committee shall serve for a term of one year, or until their earlier resignation, replacement or removal from the Committee or Board.

V. Meetings

The Committee:

- (1) shall meet at least four times per calendar year, but may meet more frequently at the call of any member of the Committee; and
- (2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation’s Bylaws, or the laws to which the Corporation is subject.

VI. Resources

All offices, divisions and components of the Corporation (“Management”), including the Office of Inspector General (“OIG”) shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.

VII. Authority

The Committee:

- (1) unless otherwise directed by the Board, shall oversee the selection and retention of the external auditor (“External Auditor(s)”) by the Inspector General (“IG”) of the Corporation including the confirmation of the independence of external auditor;
- (2) shall have unrestricted access to the Corporation’s books, records, facilities, personnel, and External Auditor(s) except, with regard to confidential information in the possession of the OIG that it is prohibited by law from sharing with the Board;
- (3) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee’s purposes or as may be directed by the Board from time to time;
- (4) may delegate authority to one or more designated members of the Committee;
- (5) may rely on the expertise and knowledge of Management, the OIG, External Auditor(s), and such consultants and experts that the Board approves for carrying out its oversight responsibilities;
- (6) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and
- (7) may require any person, including the External Auditor or any officer or employee of the Corporation, to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VIII. Duties and Responsibilities

A. Audits and Audit Related Matters

The Committee shall:

- (1) review and discuss with Management, the OIG, and the Corporation's External Auditor(s) the contemplated scope and plan for LSC's required annual audit;
- (2) review and discuss with the External Auditor(s), the OIG, and Management the annual audit report and results of the External Auditor's year-end audit, including any problems or difficulties encountered by the External Auditor(s); any response by Management or the OIG to any audit findings, and any areas of significant disagreement between Management, the OIG, and the External Auditor(s); and any recommendations of the External Auditor(s);
- (3) review and discuss with the OIG its audit responsibilities and performance; its audit plan for the Corporation and the risk assessment that drives its audit plan; and the effectiveness of its audit plan and activities; and provide the OIG with any recommended audits that would assist the Committee or the Board of Directors;
- (4) review and discuss with the OIG all significant matters relative to audits performed by the OIG, including any problems the OIG encountered while performing their audits;
- (5) review and discuss with Management and the Board the Corporation's response to and, where appropriate, timely implementation of, significant findings and recommendations made by the OIG and External Auditor(s); and
- (6) review and discuss with Management any internal audit or review activities, including its audit or review plan, its audit or review reports, and the performance of those portions of Management that perform audits or reviews.

B. Financial Reporting:

The Committee shall:

- (1) review Management representation letters or certifications and the LSC Finance Committee chairperson's letters or certifications regarding the contents, accuracy, or completeness of financial reports, as appropriate;
- (2) review all issues identified and brought to the Committee's attention by Management, the OIG, the GAO or the External Auditor that may have a material effect on the Corporation's financial statements; and
- (3) review any significant deficiencies in internal control over financial reporting identified by Management, the OIG, or the External Auditor(s) and ensure that corrective action is taken by Management.

C. Risk Management

The Committee shall:

- (1) review LSC's system of internal controls that are designed to minimize the risk of fraud, theft, corruption, or misuse of funds, including by receiving information;
 - a. from Management about whether internal controls performed by Management are operating properly;
 - b. from OIG about whether its investigations function, audit function, and compliance function are operating properly; and
 - c. from Management and OIG about whether there is proper coordination and communication between them regarding their respective operations designed to minimize the risk of fraud, theft, corruption, or misuse of funds;
- (2) ensure that its review of the OIG's investigations function occurs in a manner that does not compromise the OIG's independence or the confidentiality of its investigations;
- (3) consult with the Inspector General as to an appropriate approach regarding communications and meetings between the Committee and the OIG;
- (4) review any concerns expressed regarding any impediments to the independence of the OIG;
- (5) confirm that there is a proper confidential mechanism in place for individuals to make complaints, anonymously if desired, regarding suspected fraud, theft, corruption, or misuse of funds, or problems involving internal controls, auditing, or accounting, and that there are proper procedures in place for the receipt, retention, and handling of such complaints; and
- (6) review LSC's, including training and education efforts, to help ensure that LSC employees and grantees act ethically and safeguard LSC funds.

D. Other Duties and Responsibilities

The Committee shall:

- (1) report to the Board at least four times per calendar year and on such other occasions as requested to do so by the Board;
- (2) periodically assess the Committee's performance under the Charter, reassess the adequacy of the Charter, and report to the Board the results of the evaluation and any recommendations for proposed changes to the Charter; and

- (3) perform such other duties, consistent with this Charter, as are assigned to the Committee by the Board.

IX. Limitations

- (1) Nothing contained in this Charter is intended to expand the applicable standards of liability under statutory or regulatory requirements for the Board or its Directors.
- (2) Members of the Committee are entitled to rely on the expertise, knowledge, and judgment of Management, the Inspector General, and the External Auditor(s) and any consultant or expert retained by them. The Committee's responsibilities are not to be interpreted as a substitute for the professional obligations of others.
- (3) It is not the duty of the Committee to conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles, generally accepted government auditing standards (the "Yellow Book") and other applicable rules, regulations, guidelines and instructions. These are the responsibilities of the OIG, the External Auditor(s) and Management.
- (4) Nothing contained in this Charter shall be construed as limiting the authority of the Inspector General under the Inspector General Act or is intended to restrict the authority of the Inspector General to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation.
- (5) Nothing contained in this Charter shall be construed as authorizing the Committee to exercise the powers of the Board of Directors.

Finance Committee

FINANCE COMMITTEE

July 27, 2012

Agenda

1. Approval of agenda
2. Presentation on LSC's Financial Reports for the first eight months of FY 2012
 - Presentation by David Richardson, Treasurer/Comptroller
3. Consider and act on a Revised Consolidated Operating Budget for FY 2012, including internal budgetary adjustments and COB reallocation, and recommendation of *Resolution 2012-XXX* to the Board of Directors
 - Presentation by David Richardson, Treasurer/Comptroller
4. Review of the Guidelines for Adoption, Review and Modification of the Consolidated Operating Budget
 - Presentation by David Richardson, Treasurer/Comptroller
5. Discussion regarding the status of the FY 2013 appropriation process
 - Carol Bergman, Director, Government Relations and Public Affairs
6. Consider and act on recommendation to the Board of Directors for FY 2014 Budget Request
 - Presentation by Carol Bergman, Director, Government Relations and Public Affairs
 - Comments by David Richardson, Treasurer/Comptroller
7. Public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

*Financial Reports for
Eight Months*

FINANCIAL & ADMINISTRATIVE SERVICES

MEMORANDUM

TO: Robert J. Grey, Jr., Finance Committee Chairman
FROM: David L. Richardson, Treasurer/Comptroller *dlr*
DATE: June 25, 2012
SUBJECT: May 2012 Financial Report

The financial report for the period ending May 31, 2012, is attached for your review. There are three worksheets that comprise this report:

Attachment A provides summary information for each element of the Consolidated Operating Budget (COB) in two sections.

Attachment B presents Management and Grants Oversight's budget and expenditures.

Attachment C provides budget and expenditures for the Office of Inspector General (OIG).

The first section of Attachment A presents information for the Delivery of Legal Assistance, *Roman numeral I*, and the Herbert S. Garten Loan Repayment Assistance Program, *Roman numeral II*. The expenditures for the reporting period are compared to the annual budget and the report shows the variance for each budget line. The expenditures are also compared to the same period of the prior year.

- I. There are four elements included in the Delivery of Legal Assistance:
 1. The Basic Field Programs budget is \$324,066,604; the grant expenses are \$323,213,547. The remaining funds of \$853,057 are earmarked to support grants in the Mississippi, Wyoming, and American Samoa service areas.

2. The U.S. Court of Veterans Appeals Funds budget totals \$2,730,170; a grant award was completed in May for \$2,700,000. The remaining funds of \$30,170 will support this year's administrative expenses.
 3. The Grants from Other Funds budget totals \$725,077; emergency grants totaling \$253,346 have been awarded. The balance of \$471,731 is available to support additional one-time grants.
 4. The Technology Initiatives budget totals \$7,226,487. Net grant expenses are \$3,553,984 and are comprised of thirty-seven grants totaling \$3,644,146 and the cancelation of four grants totaling \$90,162. The remaining funds of \$3,672,503 will be used for this year's technology grants and other technology initiative expenses.
- II. The Herbert S. Garten Loan Repayment Assistance Program's budget is \$2,181,550; there are no loan expenses for the period.

The second section of Attachment A presents expenditures for Management and Grants Oversight (MGO), *Roman numeral III*, and the OIG, *Roman numeral IV*. The expenditures are compared to a pro rata allocation of the annual budget based on the number of months into the fiscal year. The presentation is made this way because MGO and OIG expenditures occur on a monthly basis.

- III. MGO's annual budget totals \$21,319,956. The budget is comprised of the MGO operating budget of \$19,169,600 and the Contingency Funds totaling \$2,150,356.

The MGO operating budget allocation is \$12,779,734 and is compared to the expenditures of \$10,478,763. This is \$2,300,971 or 18.00% under budget. Encumbrances for the period are \$123,017. The expenditures are \$775,930 less than the same period in 2011. (MGO's previous month's variance was \$2,122,345 or 18.98% under budget.)

Including the MGO Contingency Funds budget allocation of \$1,433,571 for the period, the percentage under budget is 26.27%, which compares to 27.15% under budget from the April Financial Report.

- IV. OIG's annual budget totals \$6,431,553. The budget consists of the OIG operating budget of \$5,330,755 and the Contingency Funds of \$1,100,798 to support the office's multi-year budget plans.

The OIG operating budget allocation is \$3,553,837 and compares to the actual expenditures of \$2,954,276.

This is \$599,561 or 16.87% under budget. Encumbrances for the period are \$241,806. The expenditures are \$303,674 more than in 2011. (OIG's previous month's variance was \$524,376 or 16.86% under budget.)

Including the OIG Contingency Funds budget allocation of \$733,865, the percentage under budget is 31.10%. This compares to 31.09% under budget from the previous month's report.

Attachment B, page 1, presents comparative budgets and expenditures for MGO by cost center; all cost centers are under budget. Attachment B, page 2, shows the budgets and expenditures by budget category for the MGO operating budget categories. The variances reveal that we are under budget in each category.

The largest variance under budget of \$907,768 is from the Compensation and Benefits category. The reason for this variance is because we continue to have a number of open positions.

The open positions by cost center are as follows:

Executive Office – Vice President for Grants Management, Director of Institutional Advancement, and an Administrative Assistant;

Legal Affairs – Assistant General Counsel and an Administrative Assistant;

Program Performance – Deputy Director, Program Counsel, and Program Analyst;

Information Management – Research Assistant; and

Compliance and Enforcement – Director and an Administrative Assistant.

The second largest variance under budget is in the Travel and Transportation category, in the amount of \$410,893. Travel expenses are projected to increase in the coming months because of the seasonality of travel during the fiscal year.

The third largest variance under budget is in the Consulting budget category in the amount of \$369,266. The cost centers that account for these variances include:

Board of Directors – costs for Strategic Planning, the implementation phase of the Fiscal Oversight Task Force recommendations, and Institutional Development;

Executive Office – for a union negotiation facilitator;

Legal Affairs – for outside counsel costs;

Human Resources – for an auditor regarding LSC's retirement program;

Program Performance – for a consulting firm to review the internal controls of the grant competition process, per a Government Accountability Office recommendation; and

Compliance and Enforcement – for consulting services related to developing a fiscal risk assessment program and on-site fiscal review program consistent with best practices.

Attachment B, page 3, shows the MGO Contingency Funds budget categories. Attachment B, page 4, provides a summary of the expenditures by office and by budget category.

When the MGO Operating Budget and Contingency Funds are combined, Other Operating Expenses is the second largest budget category. Because of this, the Board has asked for a breakdown of the spending by account, which is reflected in Attachment C.

Attachment D, page 1, shows a comparative OIG budget and expenditures by budget category; the budget categories are all under budget.

The largest budget category variances in the OIG budget include funds for:

- A. Consulting totaling \$218,319; the OIG has \$218,072 in encumbrances for the second round of Quality Control Reviews of grantees' audit reports performed by independent Public Accountants and for IT support services including network operations, a new OIG intranet and a document management system.
- B. Compensation and Benefits totaling \$123,774 because of two open positions -- a Program Evaluation Analyst and an Auditor.

Attachment D, page 2, shows the budget and expenditures by budget category for the OIG Contingency Funds; the budget categories are all under budget. The unused OIG Contingency Funds are earmarked for the multi-year spend-down plan.

If you have any questions, please let me know.

Attachments (A – B – C - D)

cc Board of Directors
President
Corporate Secretary
Inspector General

LEGAL SERVICES CORPORATION
 CONSOLIDATED OPERATING BUDGET WORKSHEET
 FOR THE EIGHTH MONTH OF FISCAL YEAR 2012
 PERIOD ENDING MAY 31, 2012

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 2						
ANNUAL BUDGET	ACTUAL	ANNUAL BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
	\$324,066,604	\$324,066,604	\$853,057	0.26	\$0	\$377,520,679	(\$54,307,132)
1. Basic Field Programs	2,730,170	2,730,170	30,170	1.11	0	1,820,018	879,982
2. US Court of Vets Appeals Funds	725,077	725,077	471,731	65.06	0	0	253,346
3. Grants From Other Funds	7,226,487	7,226,487	3,672,503	50.82	0	3,042,894	511,090
4. Technology Initiatives							
TOTAL DELIVERY OF LEGAL ASSISTANCE	\$334,748,338	\$334,748,338	\$5,027,461	1.50	\$0	\$382,383,591	(\$52,662,714)
II. HERBERT S. GARTEN LOAN REPAYMENT ASSISTANCE PROGRAM	\$2,181,550	\$2,181,550	\$2,181,550	100.00	\$0	\$856,532	(\$856,532)
III. MANAGEMENT & GRANTS OVERSIGHT							
1. M G & O Operating Budget	\$19,169,600	\$12,779,734	\$2,300,971	18.00	\$123,017	\$11,254,693	(\$775,930)
1. M G & O Contingency Funds	2,150,356	1,433,571	1,433,571	100.00	0	0	0
TOTAL MANAGEMENT GRANTS & OVERSIGHT	\$21,319,956	\$14,213,305	\$3,734,542	26.27	\$123,017	\$11,254,693	(\$775,930)
IV. INSPECTOR GENERAL							
1. I G Operating Budget	\$5,330,755	\$3,553,837	\$599,561	16.87	\$241,806	\$2,650,602	\$303,674
2. I G Contingency Funds	1,100,798	733,865	733,865	100.00	0	0	0
TOTAL INSPECTOR GENERAL	\$6,431,553	\$4,287,702	\$1,333,426	31.10	\$241,806	\$2,650,602	\$303,674
TOTAL	\$364,681,397	\$355,430,895	\$12,276,979		\$364,823	\$397,145,418	(\$53,991,502)

* 8/12THS OF THE 12 MONTH BUDGET

** \$353,934 LRAP ACCOUNTS RECEIVABLE

LEGAL SERVICES CORPORATION
CONSOLIDATED OPERATING BUDGET WORKSHEET
FOR THE EIGHTH MONTH OF FISCAL YEAR 2012
PERIOD ENDING MAY 31, 2012

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	F I S C A L Y E A R 2 0 1 2						
ANNUAL BUDGET	ACTUAL	EIGHTH MONTH OF FY 2012 BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
	\$630,500	\$420,333	\$191,151	45.48	\$51,599	\$214,971	\$14,211
1. Board of Directors	1,022,500	681,667	321,768	47.20	0	303,930	55,969
2. Executive Office	1,437,850	958,567	189,349	19.75	5,130	821,526	(52,308)
3. Legal Affairs	913,200	521,720	87,080	14.30	0	550,088	(28,368)
4. Government Relations/Public Affairs	798,200	470,661	61,472	11.55	13,230	455,734	14,927
5. Human Resources	3,389,200	2,002,763	256,704	11.36	21,812	2,110,071	(107,308)
6. Financial & Admin Services	1,855,950	984,121	253,179	20.46	24,846	1,182,895	(198,774)
7. Information Technology	4,198,650	2,466,087	333,013	11.90	6,400	2,632,845	(166,758)
8. Program Performance	675,250	401,476	48,691	10.82	0	418,377	(16,901)
9. Information Management	4,248,300	2,273,636	558,564	19.72	0	2,564,256	(290,620)
10. Compliance & Enforcement							
MANAGEMENT & GRANTS OVERSIGHT SUBTOTAL	\$19,169,600	\$12,779,734	\$2,300,971	18.00	\$123,017	\$11,254,693	(\$775,930)
11. M G & O Contingency Funds	2,150,356	0	1,433,571	100.00	0	0	0
TOTAL MANAGEMENT & GRANTS OVERSIGHT	\$21,319,956	\$14,213,305	\$3,734,542	26.27	\$123,017	\$11,254,693	(\$775,930)

* 8/12THS OF THE 12 MONTH BUDGET

III. MANAGEMENT & GRANTS OVERSIGHT

1. Board of Directors
2. Executive Office
3. Legal Affairs
4. Government Relations/Public Affairs
5. Human Resources
6. Financial & Admin Services
7. Information Technology
8. Program Performance
9. Information Management
10. Compliance & Enforcement

MANAGEMENT & GRANTS OVERSIGHT SUBTOTAL

11. M G & O Contingency Funds

TOTAL MANAGEMENT & GRANTS OVERSIGHT

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHTH MONTH OF FY 2012 - PERIOD ENDING MAY 31, 2012
MANAGEMENT AND GRANTS OVERSIGHT

BUDGET CATEGORY	(1)	(2)	(3)	(4)		(5)	(6)	(7)		(8)
	ANNUAL BUDGET	ACTUAL	EIGHTH MONTH BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)		
TOTAL COMP./BENEFITS	12,925,250	7,709,069	8,616,837	907,768	10.53	-	8,083,400	(374,331)		
TEMP. EMPLOYEE PAY	636,250	238,462	424,166	185,704	43.78	-	284,650	(46,188)		
CONSULTING	1,067,100	342,135	711,401	369,266	51.91	71,229	292,805	49,330		
TRAVEL/TRANSPORTATION EXPS	1,304,150	458,540	869,433	410,893	47.26	-	523,377	(64,837)		
COMMUNICATIONS	152,150	56,546	101,433	44,887	44.25	-	71,416	(14,870)		
OCCUPANCY COST	1,758,500	1,140,500	1,172,333	31,833	2.72	-	1,146,589	(6,089)		
PRINTING & REPRODUCTION	91,100	39,388	60,732	21,344	35.14	21,812	40,537	(1,149)		
OTHER OPERATING EXPENSES	846,400	437,159	564,266	127,107	22.53	29,976	453,991	(16,832)		
CAPITAL EXPENDITURES	388,700	56,964	259,133	202,169	78.02	-	357,928	(300,964)		
TOTAL	\$19,169,600	10,478,763	12,779,734	2,300,971	18.00	123,017	11,254,693	(775,930)		

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHTH MONTH OF FY 2012 - PERIOD ENDING MAY 31, 2012
MANAGEMENT GRANTS & OVERSIGHT CONTINGENCY FUNDS

BUDGET CATEGORY	(1)	(2)	(3)	(4)		(5)	(6)	(7)		(8)
	ANNUAL BUDGET	ACTUAL	EIGHTH MONTH BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)		
TOTAL COMP./BENEFITS	420,000	-	280,000	280,000	-	-	-	-	-	
TEMP. EMPLOYEE PAY	-	-	-	-	-	-	-	-	-	
CONSULTING	-	-	-	-	-	-	-	-	-	
TRAVEL/TRANSPORTATION EXPS	-	-	-	-	-	-	-	-	-	
COMMUNICATIONS	-	-	-	-	-	-	-	-	-	
OCCUPANCY COST	-	-	-	-	-	-	-	-	-	
PRINTING & REPRODUCTION	-	-	-	-	-	-	-	-	-	
OTHER OPERATING EXPENSES	1,730,356	-	1,153,571	1,153,571	-	-	-	-	-	
CAPITAL EXPENDITURES	-	-	-	-	-	-	-	-	-	
TOTAL	2,150,356	-	1,433,571	1,433,571	-	\$0	-	-	-	

LEGAL SERVICES CORPORATION
OPERATING EXPENSES FOR FISCAL YEAR 2012
FOR THE EIGHTH MONTH OF FY 2012 - PERIOD ENDING MAY 31, 2012
MANAGEMENT AND GRANTS OVERSIGHT

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICE	LEGAL AFFAIRS	GOV'T REL PUBLIC AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS
COMPENSATION & BENEFITS	-	341,962	639,765	499,731	417,935	600,617
TEMPORARY EMPLOYEE PAY	-	-	1,172	-	14,390	-
CONSULTING	98,656	-	105,430	728	18,965	-
TRAVEL/TRANSPORTATION EXPS	101,079	15,290	7,662	6,982	748	7,021
COMMUNICATIONS	2,417	2,392	2,534	2,183	1,390	6,573
OCCUPANCY COST	-	-	-	-	-	1,140,000
PRINTING & REPRODUCTION	-	-	-	-	-	39,388
OTHER OPERATING EXPENSES	27,030	255	12,655	12,096	17,233	207,179
CAPITAL EXPENDITURES	-	-	-	-	-	1,985
TOTAL	\$229,182	\$359,899	\$769,218	\$521,720	\$470,661	2,002,763
BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORMANCE	INFORMATION MANAGEMENT	COMPLIANCE & ENFORCEMENT	CONTINGENCY	TOTAL MGT & GRANTS OVERSIGHT
COMPENSATION & BENEFITS	676,405	2,113,520	385,615	2,033,519	-	7,709,069
TEMPORARY EMPLOYEE PAY	-	127,836	-	95,064	-	238,462
CONSULTING	94,256	24,100	-	-	-	342,135
TRAVEL/TRANSPORTATION EXPS	8,155	173,324	-	138,279	-	458,540
COMMUNICATIONS	22,373	9,967	16	6,701	-	56,546
OCCUPANCY COST	-	500	-	-	-	1,140,500
PRINTING & REPRODUCTION	-	-	-	-	-	39,388
OTHER OPERATING EXPENSES	127,953	16,840	15,845	73	-	437,159
CAPITAL EXPENDITURES	54,979	-	-	-	-	56,964
TOTAL	\$984,121	2,466,087	\$401,476	\$2,273,636	-	10,478,763

ACCOUNT CODES	DESCRIPTION	COST CENTERS	YTD EXPENSE
5650	ADVERTISING & CLIPPING SERVICES	BOARD OF DIRECTORS GOVERNMENT RELATIONS/PUBLIC AFFAIRS HUMAN RESOURCES PROGRAM PERFORMANCE TOTAL	9,402.00 4,148.16 10,846.50 14,819.29 39,215.95
5660	DUES & MEMBERSHIPS	EXECUTIVE OFFICE LEGAL AFFAIRS TOTAL	255.00 255.00 510.00
5670	SUBSCRIPTIONS	GOVERNMENT RELATIONS/PUBLIC AFFAIRS HUMAN RESOURCES FINANCIAL & ADMIN SERVICES INFORMATION TECHNOLOGY INFORMATION MANAGEMENT PROGRAM PERFORMANCE COMPLIANCE & ENFORCEMENT TOTAL	7,619.13 362.10 756.15 380.00 10,483.56 1,160.24 62.70 20,823.88
5680	EMPLOYEE LECTURES/OTHER ACTIVITIES	HUMAN RESOURCES FINANCIAL & ADMIN SERVICES	3,320.31 18,847.05 22,167.36
5690	OFFICE EXPENSES	BOARD OF DIRECTORS LEGAL AFFAIRS GOVERNMENT RELATIONS/PUBLIC AFFAIRS HUMAN RESOURCES FINANCIAL & ADMIN SERVICES INFORMATION TECHNOLOGY INFORMATION MANAGEMENT COMPLIANCE & ENFORCEMENT TOTAL	684.14 360.30 266.00 2,433.46 6,200.63 610.00 4,130.24 10.00 14,694.77
		TOTAL OTHER OPERATING EXPENSES	437,158.12

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHTH MONTH OF FY 2012 - PERIOD ENDING MAY 31, 2012
INSPECTOR GENERAL

BUDGET CATEGORY	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	ANNUAL BUDGET	ACTUAL	EIGHTH MONTH BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)
F I S C A L Y E A R 2 0 1 2								
TOTAL COMP./BENEFITS	3,954,400	2,512,493	2,636,267	123,774	4.70	-	2,354,998	157,495
TEMP. EMPLOYEE PAY	40,000	22,647	26,667	4,020	15.07	-	3,000	19,647
CONSULTING	619,850	194,914	413,233	218,319	52.83	218,072	51,540	143,374
TRAVEL/TRANSPORTATION EXPS	385,000	137,422	256,667	119,245	46.46	22,000	114,170	23,252
COMMUNICATIONS	34,050	13,126	22,700	9,574	42.18	-	11,081	2,045
OCCUPANCY COST	6,000	-	4,000	4,000	100.00	-	1,007	(1,007)
PRINTING & REPRODUCTION	10,100	5,006	6,733	1,727	25.65	-	3,471	1,535
OTHER OPERATING EXPENSES	81,355	30,228	54,237	24,009	44.27	-	37,368	(7,140)
CAPITAL EXPENDITURES	200,000	38,440	133,333	94,893	71.17	1,734	73,967	(35,527)
TOTAL	\$5,330,755	2,954,276	3,553,837	599,561	16.87	241,806	2,650,602	303,674

LEGAL SERVICES CORPORATION
FINANCIAL REPORT BY BUDGET CATEGORY
FOR THE EIGHTH MONTH OF FY 2012 - PERIOD ENDING MAY 31, 2012
INSPECTOR GENERAL CONTINGENCY FUNDS

BUDGET CATEGORY	(1)	(2)	(3)	(4)			(5)	(6)	(7)	(8)
	ANNUAL BUDGET	ACTUAL	EIGHTH MONTH BUDGET	VARIANCE BUD VS ACT UNDER / (OVER)	% OF VARIANCE UNDER / (OVER)	ENCUMBRANCES	PRIOR Y-T-D ACTUAL	VARIANCE ACTUAL VS PRIOR Y-T-D INCR / (DECR)		
TOTAL COMP./BENEFITS	-	-	-	-	-	-	-	-	-	
TEMP. EMPLOYEE PAY	-	-	-	-	-	-	-	-	-	
CONSULTING	-	-	-	-	-	-	-	-	-	
TRAVEL/TRANSPORTATION EXPS	-	-	-	-	-	-	-	-	-	
COMMUNICATIONS	-	-	-	-	-	-	-	-	-	
OCCUPANCY COST	-	-	-	-	-	-	-	-	-	
PRINTING & REPRODUCTION	-	-	-	-	-	-	-	-	-	
OTHER OPERATING EXPENSES	1,100,798	-	733,865	733,865		-	-	-	-	
CAPITAL EXPENDITURES	-	-	-	-	-	-	-	-	-	
TOTAL	1,100,798	-	733,865	733,865		\$0	-	-	-	

***Revised Consolidated
Operating Budget***



FINANCIAL & ADMINISTRATIVE SERVICES

MEMORANDUM

TO: Robert J. Grey, Jr., Finance Committee Chairman

FROM: David L. Richardson, Treasurer/ Comptroller *dlr*

DATE: July 5, 2012

SUBJECT: Consolidated Operating Budget Review, Internal Budgetary Adjustments & Revised COB

Following the *Guidelines for Adoption, Review and Modification of the Consolidated Operating Budget (Guidelines)*, the office directors reviewed expenses for the eight-month period ending May 31, 2012, and they provided a projection of expenses for the four remaining months of the fiscal year (FY). When you add the expenses through May and the projected expenses, all the MGO office budgets are projected to finish under budget.

The President reviewed the information and has approved a number of internal budgetary adjustments (adjustments). There was only one adjustment over \$5,000. The Office of Legal Affairs (OLA) has secured the services of an administrative assistant to support the office during a transition period following the departure of an employee. Because of this, the OLA temporary employee pay budget category needed funds of \$22,500 to provide for this need. The funds are available from personnel compensation and benefits.

In Government Relations/Public Affairs (GRPA), an intern is included for the month of September. To be able to fill this position, temporary employee pay must be established in the amount of \$1,200. Training for GRPA staff is being planned that will require that budget category to be increased by \$2,500. The total of \$3,700 for these needs is available in personnel compensation and benefits because of the transition in filling positions.

There is one last adjustment needed for the Office of Human Resources to undertake the digital imaging project of personnel records. The funds are available from other operating expenses because we are using different, less expensive methods of advertising open positions.

We have an increase in the Consolidated Operating Budget (COB) because of an additional grant from the Public Welfare Foundation in the amount of \$276,000. The Board of Directors approved a COB for FY 2012 at the April Board Meeting totaling \$364,681,397. This grant will increase our COB to \$364,957,397.

We ask that you approve the attached resolution for the revised COB with the changes discussed above. Attachment A presents the revised COB by line item and Attachment B summarizes each office's budget by budget category.

If you have any questions or need additional information, please let me know.

Attachments (3)

Resolution
Attachment A
Attachment B



BOARD OF DIRECTORS

RESOLUTION

Revised Consolidated Operating Budget For Fiscal Year 2012

WHEREAS, the Legal Services Corporation (LSC) Board of Directors (Board) has reviewed the available funds that included a new grant from the Public Welfare Foundation for Fiscal Year (FY) 2012. The total funds for the revised Consolidated Operating Budget include:

- 1) a fiscal year (FY) 2012 appropriation of \$348,000,000;
- 2) US Court of Veterans Appeals Funds totaling \$2,726,363;
- 3) a Public Welfare Foundation totaling \$293,000, \$17,000 in April and \$276,000 in July; and
- 4) carryover in the amount of \$13,938,034, which is comprised of:
 - a. Basic Field Programs carryover of \$1,666,604;
 - b. U.S. Court of Veterans Appeals of \$3,807;
 - c. Grants from Other Funds of \$725,077;
 - d. Technology Initiatives of \$3,826,487;
 - e. Herbert S. Garten Loan Repayment Assistance Program of \$1,181,550;
 - f. Management and Grants Oversight of \$4,302,956; and
 - g. Office of Inspector General totaling \$2,231,553; and

BOARD OF DIRECTORS

WHEREAS, LSC's Management and Inspector General have presented operating budgets for FY 2012 within the available funds,

NOW, THEREFORE, BE IT RESOLVED THAT the Board hereby adopts a revised Consolidated Operating Budget for FY 2012 totaling \$364,957,397 of which \$334,748,338 is for the *Delivery of Legal Assistance*; \$2,181,550 is for the *Herbert S. Garten Loan Repayment Assistance Program*; \$21,595,956 for *Management and Grants Oversight*; and \$6,431,553 is for the *Office of Inspector General*.

**Adopted by the Board of Directors
on July 27, 2012**

John G. Levi
Chairman

Victor M. Fortuno
Corporate Secretary

fiscal

LEGAL SERVICES CORPORATION
 CONSOLIDATED OPERATING BUDGET
 FOR THE FISCAL YEAR 2012

(1) FY 2012 APPROPRIATION	(2) FY 2011 CARRYOVER	(3) COURT OF VETS APPEALS & ADJUSTMENTS	(4) FY 2012 CONSOLIDATED OPERATING BUDGET	(5) PUBLIC WELFARE FOUNDATION GRANT	(4) REVISED CONSOLIDATED OPERATING BUDGET
322,400,000	1,666,604	-	324,066,604	-	324,066,604
-	3,807	2,726,363	2,730,170	-	2,730,170
-	725,077	-	725,077	-	725,077
3,400,000	3,826,487	-	7,226,487	-	7,226,487
325,800,000	6,221,975	2,726,363	334,748,338	-	334,748,338
1,000,000	1,181,550	-	2,181,550	-	2,181,550
17,000,000	4,302,956	17,000	21,319,956	276,000	21,595,956
4,200,000	2,231,553	-	6,431,553	-	6,431,553
\$348,000,000	\$13,938,034	\$2,743,363	\$364,681,397	\$276,000	\$364,957,397

I. DELIVERY OF LEGAL ASSISTANCE

- 1. Basic Field Programs
- 2. U.S. Court of Veterans Appeals Funds
- 3. Grants From Other Funds
- 4. Technology Initiatives

DELIVERY OF LEGAL ASSISTANCE TOTALS

II. HERBERT S. GARTEN
 LOAN REPAYMENT ASSISTANCE PROGRAM

III. MANAGEMENT & GRANTS OVERSIGHT

IV. INSPECTOR GENERAL

TOTAL BUDGET

LEGAL SERVICES CORPORATION
 REVISED CONSOLIDATED OPERATING BUDGET
 FOR MANAGEMENT AND GRANTS OVERSIGHT
 AND INSPECTOR GENERAL
 FOR FISCAL YEAR 2012

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICES	LEGAL AFFAIRS	GOVERNMENT RELATIONS & PUB AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS	
COMPENSATION & BENEFITS	0	825,450	1,009,750	845,300	676,600	981,250	
TEMP. EMPLOYEE PAY	0	0	22,500	1,200	19,500	3,750	
CONSULTING	243,300	376,000	350,000	7,500	45,300	1,000	
TRAVEL & TRANSPORTATION	304,100	88,150	17,000	19,200	12,750	15,950	
COMMUNICATIONS	11,450	8,300	5,400	3,850	4,250	24,300	
OCCUPANCY COSTS	7,800	0	0	0	0	1,750,000	
PRINTING & REPRODUCTION	650	300	300	5,000	300	82,550	
OTHER OPERATING EXPENSES	63,200	300	32,900	31,150	39,500	360,400	
CAPITAL EXPENDITURES	0	0	0	0	0	170,000	
TOTAL	630,500	1,298,500	1,437,850	913,200	798,200	3,389,200	
BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORM	INFORMATION MANGEMENT	COMPLIANCE & ENFORCE	CONTINGENCY FUND	MGT & GRNTS OVERSIGHT	INSPECTOR GENERAL
COMPENSATION & BENEFITS	1,094,650	3,492,650	638,550	3,334,850	420,000	13,319,050	3,954,400
TEMP. EMPLOYEE PAY	0	251,000	0	362,000	0	659,950	40,000
CONSULTING	207,000	66,000	0	50,000	0	1,346,100	619,850
TRAVEL & TRANSPORTATION	38,000	336,000	7,500	468,000	0	1,306,650	385,000
COMMUNICATIONS	44,400	25,000	200	25,000	0	152,150	34,050
OCCUPANCY COSTS	0	500	0	200	0	1,758,500	6,000
PRINTING & REPRODUCTION	0	0	0	2,000	0	91,100	10,100
OTHER OPERATING EXPENSES	253,200	27,500	29,000	6,250	1,730,356	2,573,756	1,182,153
CAPITAL EXPENDITURES	218,700	0	0	0	0	388,700	200,000
TOTAL	1,855,950	4,198,650	675,250	4,248,300	2,150,356	21,595,956	6,431,553

Review of Guidelines
Revised COB

GUIDELINES FOR ADOPTION, REVIEW AND MODIFICATION OF THE CONSOLIDATED OPERATING BUDGET OF THE LEGAL SERVICES CORPORATION

POLICY

It is the policy of the Legal Services Corporation's Board of Directors (Board) to consider and adopt a Consolidated Operating Budget (COB) for each fiscal year. The purpose of this policy is to promote good fiscal oversight and transparency in the management of the Corporation's resources and activities. This COB shall not be subject to modification except by action of the Board or as stated in these guidelines.

PROCEDURE

1. At the July Finance Committee (Committee) meeting, a resolution granting Temporary Operating Authority will be presented to the Committee for the new fiscal year that begins on October 1. This resolution will be based on the current year's appropriation. After the Committee review, a recommendation to adopt this resolution or a revised resolution will be approved and presented to the Board for approval.
2. At the October Committee meeting, the Committee will receive and review an operating budget recommendation from LSC's President (President) for the Corporation's Management and Grants Oversight (MGO) budget for the fiscal year that began on October 1. The budget will contain the actual appropriation for the fiscal year or the funding as provided by a Continuing Resolution (CR), a projection of the prior fiscal year's carryover funds, and any additional funds that are available.

This budget, along with the information provided by the Office of Inspector General (OIG) pursuant to paragraph 10, will be summarized by the Treasurer/Comptroller, and along with amounts for basic field grants, technology initiative grants, and loan repayment assistance, and constitute a Temporary Operating Budget (TOB), as shown in Attachment A. This information, along with a proposed resolution, will be presented to the Committee for adoption. The Committee will modify the proposed resolution, if necessary, and recommend it to the Board for adoption.

3. At its January meeting, the Committee will be presented with a COB and will contain the appropriation levels, the prior year's carryover funds, and any additional funds that are available. The COB and a proposed resolution will be provided to the Committee for review. The information will be revised, if necessary, and then approved for recommendation to the Board. If the appropriation for the fiscal year has not been finalized, a revised TOB will be presented that reflects any changes included in the CR and all the funds available. This procedure will be followed at each successive meeting until a final appropriation has been enacted and a COB can be provided.
4. The MGO staff, under the direction of the President, will conduct internal budget reviews in order to examine expenditures of the Corporation and commitments at the conclusion of the February and May reporting periods. This review shall address the budget performance of each office and each COB line item, with the exception of the OIG. Each office's review shall be summarized in a worksheet that includes the current COB or TOB, expenses year-to-date, expense projections for the remainder of the year, and the remaining funds for the fiscal year. Based on this review, staff recommendations shall be made to the President for internal budgetary adjustments (adjustments). Adjustments in amounts not to exceed \$75,000 may be made by the President without prior Committee and Board approval. Adjustments in

excess of \$75,000 may be made only after Committee and Board approval. All such adjustments shall be included in the report described in paragraph 8.

5. COB reallocations (reallocations) may be made by the President only after review by the Committee, approval by the Board, and delivery of the required notice to Congress, if applicable, under the reprogramming requirements. All such reallocations shall be included in the report described in paragraph 8.
6. In the event that an unanticipated need arises for an immediate COB reallocation at a time when no Board meeting can be scheduled, the President shall prepare and submit a detailed memorandum to each Board member. If approved in writing by the Chairman of the Committee and by the Chairman of the Board, the President may proceed on the basis of that authorization until subsequent Board review. Any Board Member may call into question a COB reallocation of this kind, in which case the President will suspend the reallocation until a Board review is conducted and either the reallocation request is approved by the Board or the objection is withdrawn. All COB reallocations will be presented to the Committee in accordance with paragraph 7.
7. The LSC annual appropriation is subject to reprogramming and transfer requirements set out in each appropriations act, which include advance fifteen-day notice to the House and Senate Committees on Appropriations. Generally, authorized transfers are subject to the same notice requirements as reprogrammings. These are standing provisions that change little, if any, each year. Pursuant to the Congressional reprogramming and transfer provisions, if the President proposes an adjustment that is subject to these requirements then the action shall not take effect until reviewed by the Committee, approved by the Board,

and the notice and any other requirements have been completed. All such actions shall be included in the reports described in paragraph 8.

8. The adjustments approved by the President, as discussed in paragraph 4, will be presented to the Committee at the April and July meetings. The adjustments will be based on the staff reviews of spending through February and May, respectively. In connection with these reviews, a full report of expenses, adjustments, any additional funds that are available, and recommended COB reallocations shall be submitted to the Committee. The report shall include a statement of operating expenses and a detailed worksheet that shows the currently approved COB and will be sufficiently detailed to allow the Committee to review the President's decisions and recommendations. Nothing in this paragraph shall preclude the staff from furnishing other regular or ad-hoc reports to the Committee and Board that would be useful to the Committee in fulfilling its oversight role.
9. A review of the annual COB will occur at the annual Board Meeting in January. The report shall include a statement of operating expenses and a detailed worksheet that reflects the currently approved COB. Information will be provided to demonstrate that the funds allocated during the budget process have been used in accordance with the approved budget. If there is a need to make adjustments to align the MGO budget with the expenses, the adjustments will be reported following the procedures as detailed in paragraphs 4 and 8.
10. The OIG reports directly to the Board and provides reports directly to Congress. The OIG will submit a budget for its operations, participate in quarterly reviews, and make adjustments within the OIG's budget line in accordance with these guidelines. The OIG will provide the Treasurer/Comptroller, for administrative purposes only, with timely notification of budget-related actions. Presentation of the OIG budget

and adjustments to the Board shall follow the same procedures as outlined above. The OIG budget submissions to the Committee will be presented along with the MGO submissions. No provision of these guidelines is to be construed as affecting the independence of the OIG.

Revised: July 5, 2012

ATTACHMENTS:

- A. Consolidated Operating Budget
- B. Budget Categories Summarized by Office
- C. Budget Calendar, July 2012 through February 2014

GUIDELINES FOR ADOPTION, REVIEW AND MODIFICATION
OF THE CONSOLIDATED OPERATING BUDGET
OF THE LEGAL SERVICES CORPORATION

Alternative Paragraph 10 (with tracked changed)

10. The OIG reports directly to the Board and provides reports directly to Congress. The OIG will submit a budget for its operations, participate in quarterly reviews, and make adjustments within the OIG's budget line in accordance with these guidelines, except that internal budget adjustments shall not be subject to Board approval. The OIG will provide the Treasurer/Comptroller, for administrative purposes only, with timely notification of budget-related actions. ~~Presentation of~~ The OIG budget will be presented as outlined above and adjustments will be reported at the next Board Meeting~~to the Board shall follow the same procedures as outlined above.~~ The OIG budget submissions to the Committee will be presented along with the MGO submissions. No provision of these guidelines is to be construed as affecting the independence of the OIG.

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
July 2012	<p>FC reviews the Financial Reports for May.</p> <p>Staff completes an eight-month review of operating expenses, and projects expenses through the remainder of the FY. As a result of this review internal budgetary adjustments (adjustments) are recommended to the President.</p> <p>A report is prepared for the Financial Committee (FC) to review the adjustments and any Consolidated Operating Budget Reallocations (Reallocations), if necessary.</p> <p>FC presents the report to the Board of Directors (Board) for their action, if necessary.</p>	<p>FC reviews and adopts a resolution granting Temporary Operating Authority for FY 2013 and recommends it to the Board for its' adoption.</p>	<p>Staff develops a Management and Grants Oversight (MGO) budget for FY 2014 and presents it to LSC's President.</p> <p>Staff, under the direction of the President, completes a FY 2014 Budget "Mark" recommendation and presents it to the FC for consideration.</p> <p>FC considers the Budget "Marks" as submitted by LSC's Management, NLADA, SCLAID, and other interested parties.</p>	

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
August 2012	FC reviews the Financial Reports for June.	Staff develops a MGO budget for 2013 and presents it to the President for review.	FC considers and acts on a FY 2014 Budget "Mark" that is approved by resolution. The resolution is recommended to the Board for its adoption.	
September	FC reviews the Financial Report for July. Fiscal year ends.	Office directors and the President finalize a TOB to begin the fiscal year. Appropriation or Continuing Resolution is enacted by Congress and signed into law by President.	Budget "Mark" provided to OMB.	

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
October 2012	Books are closed. FC reviews the Financial Report for August.	Fiscal year begins. The TOB is presented to the President for review for 2013. FC considers the President's recommended TOB and presents it to the Board for its adoption.	Staff begins to develop the budget documents for submission to Congress in February.	
November	FC reviews the Financial Report for September. Annual financial audit begins.			
December 2012	Annual financial audit completed and financial statements and notes are prepared.	Staff develops a revised TOB or COB and presents it to the President for review.	Staff finalizes budget (appropriation) documents for submission to Congress.	

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
January 2013	<p>The accounting firm presents the annual financial audit to the Audit Committee.</p> <p>A report regarding the annual budget and expense is prepared for the President's review. This report will be presented to the FC and the report will identify any adjustments or reallocations, if necessary.</p> <p>A report will be made by the FC and approved by Board, if necessary.</p> <p>The Form 990 is prepared and presented to the Audit Committee for review.</p>	<p>FC reviews the Financial Report for November</p> <p>Staff, under the direction of the President, finalizes the operating budgets and presents a revised TOB or COB.</p> <p>FC adopts a revised TOB or COB and presents it to the Board for its adoption.</p>		

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
February 2013	The Form 990 submitted to the IRS.	FC reviews the Financial Report for December.	Budget request is submitted to Congress. Congress begins consideration of the budget request and may call appropriation hearings anytime from February through May.	
March		FC reviews the Financial Report for January. Staff completes a five-month review of operating expenses, and projects expenses through the remainder of the FY. As a result of this review adjustments are recommended to the President.		

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
April 2013		<p>FC reviews the Financial Report for February.</p> <p>A report is prepared for the FC to review the adjustments and any reallocations, if necessary. This report is presented to the Board for their action, if necessary.</p>		<p>FC authorizes staff to solicit comments from NLADA, SCLAID, and other interested parties from the public regarding the FY 2015 budget "mark."</p>
May		<p>FC reviews the Financial Report for March.</p>		<p>Staff begins internal discussions regarding "Budget Mark."</p> <p>Discussions include new projects and initiatives.</p>
June 2013		<p>FC reviews the Financial Report for April.</p>		<p>FC accepts testimony regarding programs needs and funding levels from LSC's Management, NLADA, SCLAID, and other interested parties from the public.</p>

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
July 2013		<p>FC reviews the Financial Report for May.</p> <p>Staff completes an eight-month review of operating expenses, and projects expenses through the remainder of the FY. As a result of this review adjustments are recommended to the President.</p> <p>A report is prepared for the FC to review the adjustments and any reallocations, if necessary.</p> <p>FC presents the report to the Board for their action, if necessary.</p>	<p>FC reviews and adopts a resolution granting Temporary Operating Authority for FY 2014 and recommends to the Board its' adoption.</p>	<p>Staff, under the direction of the President, completes a FY 2015 Budget "Mark" recommendation and presents it to the FC for consideration.</p> <p>Staff, under the direction of the President, completes a FY 2015 Budget "Mark" recommendation and presents it to the FC for consideration.</p> <p>FC considers the Budget "Marks" as submitted by LSC's Management, NLADA, SCLALD, and other interested parties.</p>
August		<p>FC reviews the Financial Report for June.</p>	<p>Staff develops a TOB and presents it to the President for review.</p>	<p>FC recommends a Budget "Mark" to the Board for adoption.</p>

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
September 2013		<p>FC reviews the Financial Report for July.</p> <p>Fiscal year ends.</p>	<p>Directors, under the direction of the President finalize an operating budget to begin the fiscal year.</p> <p>Appropriation or Continuing Resolution is enacted by Congress and signed into law by President.</p>	Budget "Mark" provided to OMB.
October		<p>Books are closed.</p> <p>FC reviews the Financial Report for August.</p>	<p>Fiscal year begins.</p> <p>FC reviews a President's recommended budget and presents it to the Board for its adoption.</p>	Staff begins to develop the budget documents for submission to Congress in February

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
November 2013		<p>FC reviews the Financial Report for August.</p> <p>Annual financial audit begins.</p>		<p>Staff finalizes budget (appropriation) documents for submission to Congress.</p>
December 2013		<p>Financial audit completed and financial statements and notes are prepared.</p>	<p>Staff develops a revised MGO budget and presents it to the President for review.</p>	
January 2014		<p>Auditor's present the annual financial audit to the Audit Committee.</p> <p>Form 990 prepared and draft reviewed by the Audit Committee.</p>	<p>Staff, under the direction of the President, finalizes the operating budgets and presents a revised TOB or COB.</p> <p>FC adopts a revised TOB or COB and presents it to the Board for its adoption.</p>	

BUDGET TIMETABLE
JULY 2012 THROUGH FEBRUARY 2014

DATE	FY 2012	FY 2013	FY 2014	FY 2015
February 2013		The Form 990 submitted to the IRS.		Budget request is submitted to Congress. Congress begins consideration of the budget request and may call appropriation hearings anytime from February through May.

LEGAL SERVICES CORPORATION
 CONSOLIDATED OPERATING BUDGET
 FOR THE FISCAL YEAR 2012

	(1)	(2)	(3)	(4)
	FY 2012 APPROPRIATION	FY 2011 CARRYOVER	COURT OF VETS APPEALS & ADJUSTMENTS	FY 2012 CONSOLIDATED OPERATING BUDGET
I. DELIVERY OF LEGAL ASSISTANCE				
1. Basic Field Programs	322,400,000	1,666,604	-	324,066,604
2. U.S. Court of Veterans Appeals Funds	-	3,807	2,280,630	2,284,437
3. Grants From Other Funds	-	725,077	-	725,077
4. Technology Initiatives	3,400,000	3,826,487	-	7,226,487
DELIVERY OF LEGAL ASSISTANCE TOTALS	325,800,000	6,221,975	2,280,630	334,302,605
II. HERBERT S. GARTEN				
LOAN REPAYMENT ASSISTANCE PROGRAM	1,000,000	1,181,550	-	2,181,550
III. MANAGEMENT & GRANTS OVERSIGHT				
	17,000,000	4,302,956	17,000	21,319,956
IV. INSPECTOR GENERAL				
	4,200,000	2,231,553	-	6,431,553
TOTAL BUDGET	\$348,000,000	\$13,938,034	\$2,297,630	\$364,235,664

LEGAL SERVICES CORPORATION
 CONSOLIDATED OPERATING BUDGET
 MANAGEMENT AND GRANTS OVERSIGHT
 AND INSPECTOR GENERAL
 FOR FISCAL YEAR 2012

BUDGET CATEGORY	BOARD OF DIRECTORS		EXECUTIVE OFFICES	LEGAL AFFAIRS	GOVERNMENT RELATIONS & PUB AFFS	HUMAN RESOURCES	OFFICE FINANCIAL & ADMIN SRVCS
	BOARD OF DIRECTORS	EXECUTIVE OFFICES					
COMPENSATION & BENEFITS	0	825,450	1,032,250	849,000	681,350	981,250	
TEMP. EMPLOYEE PAY	0	0	0	0	19,500	3,750	
CONSULTING	243,300	100,000	350,000	7,500	42,300	1,000	
TRAVEL & TRANSPORTATION	304,100	88,150	17,000	16,700	8,000	15,950	
COMMUNICATIONS	11,450	8,300	5,400	3,850	4,250	24,300	
OCCUPANCY COSTS	7,800	0	0	0	0	1,750,000	
PRINTING & REPRODUCTION	650	300	300	5,000	300	82,550	
OTHER OPERATING EXPENSES	63,200	300	32,900	31,150	42,500	360,400	
CAPITAL EXPENDITURES	0	0	0	0	0	170,000	
TOTAL	630,500	1,022,500	1,437,850	913,200	798,200	3,389,200	
BUDGET CATEGORY	INFORMATION TECHNOLOGY	PROGRAM PERFORM	INFORMATION MANAGEMENT	COMPLIANCE & ENFORCE	CONTINGENCY FUND	MGT & GRNTS OVERSIGHT	INSPECTOR GENERAL
COMPENSATION & BENEFITS	1,094,650	3,524,650	638,550	3,334,850	420,000	13,382,000	3,889,400
TEMP. EMPLOYEE PAY	0	230,000	0	362,000	0	615,250	40,000
CONSULTING	208,000	55,000	0	50,000	0	1,057,100	660,000
TRAVEL & TRANSPORTATION	38,000	336,000	7,500	468,000	0	1,299,400	385,000
COMMUNICATIONS	44,400	25,000	200	25,000	0	152,150	34,000
OCCUPANCY COSTS	0	500	0	200	0	1,758,500	6,000
PRINTING & REPRODUCTION	0	0	0	2,000	0	91,100	10,000
OTHER OPERATING EXPENSES	252,200	27,500	29,000	6,250	1,730,356	2,575,756	1,332,153
CAPITAL EXPENDITURES	218,700	0	0	0	0	388,700	75,000
TOTAL	1,855,950	4,198,650	675,250	4,248,300	2,150,356	21,319,956	6,431,553

*Promotion & Provision
Committee*

PROMOTION AND PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE

July 27, 2012

Agenda

1. Approval of Agenda
2. Approval of Minutes of the Committee's meeting of April 16, 2012
3. Panel Presentation on diversification and expansion of revenue sources
 - Moderator—Meredith McBurney, Resource Development Consultant for ABA Resource Center for Access to Justice Initiatives and Management Information Exchange
 - Steven Gottlieb, Executive Director, Atlanta Legal Aid Society
 - Daniel Glazier, Executive Director, Legal Services of Eastern Missouri
 - Jennifer Bentley, Manager of Outreach and Development, Legal Services of South Central Michigan
 - Deierdre Weir, Executive Director, Legal Aid and Defender Association
4. Public comment
5. Consider and act on other business
6. Consider and act on motion to adjourn the meeting

*Minutes from April 16, 2012
Meeting*

**Legal Services Corporation
Meeting of the Promotion and Provision for the Delivery of
Legal Services Committee
Open Session
Monday, April 16, 2012**

DRAFT MINUTES

Chairman Laurie I. Mikva convened an *open session* meeting of the Legal Services Corporation's ("LSC") Promotion & Provision for the Delivery of Legal Services Committee ("the Committee") at 9:23 a.m. on Monday, April 16, 2012. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Laurie I. Mikva, Chairman
Sharon L. Browne
Victor B. Maddox
Father Pius Pietrzyk
Julie A. Reiskin
John G. Levi, *ex officio*

Other Board Members Present:

Martha L. Minow
Robert J. Grey, Jr.
Charles N.W. Keckler
Harry J.F. Korrell, III (by telephone)
Gloria Valencia-Weber

Also attending were:

James J. Sandman	President
Richard Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President
Victor M. Fortuno	Vice President for Legal Affairs, General Counsel, and Corporate Secretary

Mattie Cohan	Senior Assistant General Counsel, Office of Legal Affairs (OLA)
Jeffrey E. Schanz	Inspector General
David Maddox	Assistant Inspector General for Management and Evaluation, Office of Inspector General (OIG)
Daniel Sheahan	Program Evaluation Analyst, OIG
Magali Khalko	Resource Management Specialist, OIG
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Carl Rauscher	Director of Media Relations, GRPA
Elizabeth Arledge	Communications Manager, GRPA
Treefa Aziz	Government Affairs Representative, GRPA
Jeffrey Morningstar	Director, Office of Information Technology (OIT)
LaVon Smith	Network/System Engineer, Office of Information Technology (OIT)
Janet LaBella	Director, Office of Program Performance (OPP)
Jane Ribadeneyra	Program Analyst, OPP
Frank Strickland	Former LSC Board Chairman and Non-Director Member of the LSC Institutional Advancement Committee
Thomas Smegal	Chairman of Friends of LSC and Non-Director Member of the LSC Institutional Advancement Committee
Peter Edelman	Professor of Law, Georgetown University Law Center, Chair of the District of Columbia Access to Justice Commission
Judge Anna Blackburne-Rigsby	District of Columbia Court of Appeals
Andrew Marks	Partner, Crowell & Moring
Patricia Mullahy-Fugere	Executive Director, Washington Legal Clinic for the Homeless
Jessica Rosenbaum	Executive Director, District of Columbia Access to Justice Commission
Hannah Lieberman	Executive Director, Neighborhood Legal Services
John Constance	Former Director, GRPA
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)
Hillary Evans	NLADA
Don Saunders	NLADA
Terry Brooks	American Bar Association's (ABA) Standing Committee on Legal Aid and Indigent Defendants (SCLAID) SCLAID
Linda Perle	Center for Law and Social Policy (CLASP)

The following summarizes actions taken by, and presentations made to, the Committee:

Chairman Mikva called the *open session* meeting to order.

MOTION

Father Pius moved to approve the agenda. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Mr. Maddox moved to approve the minutes of the Committee's March 9, 2012 telephonic meeting, as amended by Chairman Mikva and Ms. Browne. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

Chairman Mikva invited brief discussion on LSC Management's list of suggested topics for future Committee meetings, but noted that action on the matter would be taken up in a conference call, to be scheduled at a later date, after the full Board has an opportunity to hear the Pro Bono Task Force report.

Chairman Mikva invited President Sandman to introduce the panel members for the presentation on the work of the District of Columbia Access to Justice Commission. The panel presentation was moderated by Mr. Edelman, Professor of Law, Georgetown University Law Center, and Chair of the D.C. Access to Justice Commission. The panel also included the following members: Judge Anna Blackburne-Rigsby, District of Columbia Court of Appeals; Andrew Marks, Partner, Crowell & Moring; and Patricia Mullahy-Fugere, Executive Director, Washington Legal Clinic for the Homeless.

Chairman Mikva invited public comment and received none. There was no new business to consider.

MOTION

Father Pius moved to adjourn the meeting. Ms. Browne seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* telephonic meeting of the Committee adjourned at 10:43 a.m.

DRAFT

Presentation Panel Bios

Promotion & Provision Committee: Resource Development Panel

Jennifer Bentley, Outreach & Development Manager of, Legal Services of South Central Michigan

Daniel Glazier, Executive Director, Legal Services of Eastern Missouri

Steve Gottlieb, Executive Director, Atlanta Legal Aid Society

Meredith McBurney, ABA Project to Expand Resources for Legal Services (PERLS)

Deierdre Weir, Executive Director, Legal Aid and Defender Association

Meredith McBurney, Resource Development Consultant
ABA Resource Center for Access to Justice Initiatives and Management Information Exchange

Meredith McBurney, a consultant since 1997, specializes in resource development for legal aid and other advocacy organizations. She has 35 years of experience in legal services, primarily in the areas of management, resource development and grant-making. She currently serves as a resource development consultant to the American Bar Association's Resource Center for Access to Justice Initiatives and Management Information Exchange (MIE). She also provides in-depth consulting for individual legal aid programs. In her work with the ABA Resource Center, Ms. McBurney researches and analyzes fundraising trends and practices within legal services nationwide, and uses the information she gains to provide information, training and technical assistance to bench, bar and legal services leaders throughout the country. From 1981 to 1997, she served as the executive director for Colorado's IOLTA program and the Legal Aid Foundation, Colorado's statewide fundraising organization, during which time she worked with Steve Gottlieb on the creation of The Fundraising Project. She began her legal aid career as the administrator for Colorado Rural Legal Services. She holds a B.S. in Business Administration from the University of California, Berkeley, and a B.S. in Zoology from Colorado State University, Fort Collins.

Deierdre L. Weir, Executive Director, Legal Aid and Defender Association, Inc.

Deierdre L. Weir is president and CEO of Legal Aid and Defender Association, Inc., (LAD). She is responsible for the overall administration and management of LAD's six business units. LAD has an annual budget of approximately \$18.5 million and more than 140 full-time employees. Ms. Weir received her Bachelor of Science degree from the University of Michigan, and Masters of Science degrees from the University of California and Central Michigan University. She has also received leadership training through the Nonprofit Leadership Training Program at the University of Michigan, and is a graduate of the Detroit Regional Chamber's Leadership Detroit program. Ms. Weir serves on the Board of Directors of the National Legal Aid and Defender Association, where she serves as Chair of the Leadership and Diversity Committee. She also served as chair of the Civil Policy Group. She is the past vice chair of Michigan's Legal Services Planning Body, and former co-chair of the Michigan State Planning Body. She sits on the board of the Black United Fund, the Minority Organ Tissue Transplant Education Program, and the Plymouth United Church of Christ. She has authored an article titled, "Creating a Management Institute: Better Managers Will Mean Better Service."

Promotion & Provision Committee: Resource Development Panel

**Jennifer Bentley, Outreach and Development Manager,
Legal Services of South Central Michigan**

Jennifer Bentley has been the Outreach and Development Manager of Legal Services of South Central Michigan (LSSCM) since 2007. LSSCM is a regional legal aid provider for 13 counties in south and central Michigan and the central administrative office is located in Ann Arbor. LSSCM also administers several statewide programs - the Michigan Poverty Law Program, Farmworker Legal Services, the Michigan Immigrant Rights Center, Michigan Elder Justice Initiative, Michigan Law Help and the Michigan Foreclosure Prevention Program. Prior to her current position, Ms. Bentley was a staff attorney at Legal Aid of Western Michigan for two years and then the Managing Attorney of LSSCM's office in Battle Creek for eight years. In 2011, Ms. Bentley received her Certificate in Fundraising Management from the Center on Philanthropy at Indiana University. Ms. Bentley is responsible for grants and fundraising for LSSCM's field offices and statewide programs. Ms. Bentley also works closely with the Access to Justice Campaign - a collaborative campaign between the State Bar of Michigan, the Michigan State Bar Foundation and Michigan's civil legal aid programs.

Daniel K. Glazier, Executive Director, Legal Services of Eastern Missouri

Daniel K. Glazier is the Executive Director and General Counsel at Legal Services of Eastern Missouri (LSEM). Mr. Glazier began his work with LSEM in 1981 as a Reginald Heber Smith (Reggie) Fellow in the Welfare Law Unit. In 1983, he joined the Housing Unit where he represented clients with housing issues in municipal, state, and federal courts as well as administrative proceedings. Mr. Glazier then focused on issues relating to homelessness, and directed the Homeless Legal Project at LSEM from 1997 to 2005. He was the co-managing attorney of the Housing Unit from 1998 to 2005 and was selected as the executive director & general counsel of LSEM in March of 2005. He received his J.D. in 1981 from Washington University School of Law; M.S.W. in 1980 from Washington University School of Social Work; and Bachelor in Social Work, cum laude, in 1977 from Syracuse University.

Steve Gottlieb, Executive Director, Atlanta Legal Aid Society

Steve Gottlieb has been the Executive Director of the Atlanta Legal Aid Society since 1980. During this time, Atlanta Legal Aid created a dozen special projects designed to serve particularly vulnerable populations, including persons with AIDS and cancer, children at Children's Hospital of Atlanta, homeowners subject to predatory mortgage lending, disabled persons unnecessarily institutionalized, and seniors including residents of nursing homes and personal care homes. The program has expanded each project through targeted fund raising. During Mr. Gottlieb's tenure, Atlanta Legal Aid also began its first private bar campaign and now raises approximately \$1.6 million through this campaign annually. The program also created an endowment now worth almost \$4 million. In 1988, Atlanta Legal Aid hosted an informal meeting of various legal aid fund raising staff from around the country which led to the creation of The Fundraising Project, initially housed at Atlanta Legal Aid's offices. The Fundraising Project has since merged with Management Information Exchange and continues its national yearly legal aid fund raising training, which Mr. Gottlieb has participated in on numerous occasions. In 2010, he was honored during The Fundraising Project's 20th anniversary celebration in Atlanta, Georgia.

***Operations & Regulations
Committee***

OPERATIONS & REGULATIONS COMMITTEE

July 27, 2012

Agenda

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of June 18, 2012
3. Consider and act on proposed revisions to the Committee's charter
4. Consider and act on possible revisions to the Corporation's Continuation of Operations Plan ("COOP")
5. Consider and act on rulemaking on grant termination procedures, enforcement mechanisms, and suspension procedures
 - Mark Freedman, Senior Assistant General Counsel
 - Matthew Glover, Associate Counsel to the Inspector General
 - Public comment
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

*Minutes from June 18, 2012
Meeting*

Legal Services Corporation

Meeting of the Operations and Regulations Committee

Open Session

Monday, June 18, 2012

DRAFT MINUTES

Chairman Charles N.W. Keckler convened an *open session* meeting of the Legal Services Corporation's ("LSC") Operations and Regulations Committee ("the Committee") at 2:33 p.m. on Monday, June 18, 2012. The meeting was held at the F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Committee members were present:

Charles N.W. Keckler
Harry J.F. Korrell
Laurie I. Mikva
John G. Levi, *ex officio*

Also attending were:

James J. Sandman	President
Richard L. Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President
Victor M. Fortuno	Vice President for Legal Affairs, General Counsel, and Corporate Secretary
Mark Freedman	Senior Assistant General Counsel, Office of Legal Affairs (OLA)
David L. Richardson	Comptroller and Treasurer, Office of financial And Administrative Services
Jeffrey Schanz	Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of the Inspector General (OIG)
Matthew Glover	Associate Counsel, OIG
Tom Hester	Associate Counsel, OIG
David Maddox	Assistant Inspector General for Management and Evaluation, OIG

Minutes: June 18, 2012: Open Session Meeting of the Operations and Regulations Committee

Page 1 of 4

Ronald “Dutch” Merryman	Assistant Inspector General for Audit, OIG
Glenn Rawdon	Program Counsel, Office of Program Performance (OPP)
Emily Gydesen	Intern, Executive Office
Flor Gardea	Intern, OLA
Terry Brooks	American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID)
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)

The following summarizes actions taken by, and presentations made to, the Committee:

Chairman Keckler gave thanks and appreciation to Mattie Cohan for her long period of service to the Committee and called the *open session* meeting to order.

MOTION

Ms. Reiskin moved to approve the agenda. Ms. Mikva seconded the motion.

VOTE

The motion passed by voice vote.

MOTION

Ms. Mikva moved to approve the minutes of the Committee’s April 16, 2012 meeting.

Mr. Levi seconded the motion.

VOTE

The motion passed by voice vote.

Chairman Keckler asked Mr. Fortuno to address revisions to the Board’s contributions protocol. Mr. Fortuno provided a short background on the purpose of the revisions and summarized the proposed changes. The Committee members and President Sandman shared comments and additional edits to the contributions protocol.

MOTION

Mr. Levi moved to recommend to the Board of Directors the adoption of the revised contributions protocol. Ms. Mikva seconded the motion.

VOTE

The motion passed by voice vote.

The Committee members next discussed the rulemaking options paper on a possible amendment to the regulation on subgrants and transfers, which was first presented at the April 2011 Committee and Board meeting. Mr. Freedman explained that, based on his meetings with the Office of Inspector General, rulemaking is the best option to resolve this issue with some finality. Mr. Freedman answered Committee members' questions. The Committee tasked LSC Management with preparing a supplementary rulemaking options paper.

MOTION

Ms. Mikva moved to recommend again to the Board that it begin a rulemaking process to resolve the subgrants and transfer issues, and to direct Management to prepare a supplementary rulemaking options paper. Mr. Levi seconded the motion.

VOTE

The motion passed by voice vote.

The Committee next discussed at length the comments LSC received on the current rulemaking on termination, enforcement, and suspension procedures, which were summarized and presented by Mr. Freedman. Chairman Keckler invited public comment on the alternative sanctions matter. Mr. Brooks, on behalf of ABA, Mr. Greenfield, on behalf of NLADA, and the OIG shared comments with the Committee. Chairman Keckler asked that any additional comments from the Board members be sent to Mr. Freedman.

Chairman Keckler invited public comment and received none.

There was no other business to consider.

MOTION

Ms. Mikva moved to adjourn the meeting. Mr. Korrell seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* meeting of the Committee adjourned at 4:30 p.m.

Operations & Regulations Charter

CHARTER OF THE
OPERATIONS AND REGULATIONS COMMITTEE

- I. Purpose
The purpose of the Committee shall be to consider and make recommendations to the Board regarding the Corporation's operations, regulatory policy, and rulemaking activities.
- II. Membership
The Chairman of the Board ("Chairman") shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman, who shall serve as an ex officio voting member of the Committee and count towards a quorum, shall appoint the Chair of the Committee from among these Directors. Three Committee members will be required in order to constitute a quorum.
- III. Meetings
The Committee:
- (1) shall meet at least four times per calendar year, but may meet more frequently at the call of the Chairman or any two members of the Committee; and
 - (2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation's Bylaws, or the laws to which the Corporation is subject.
- IV. Resources
All offices, divisions, and components of the Corporation, including the Office of Inspector General ("OIG"), shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.
- V. Authority
The Committee:
- (1) shall have unrestricted access to the Corporation's books, records, facilities, personnel, and outside consultants;
 - (2) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee's purposes or as may be directed by the Board from time to time;
 - (3) may delegate authority to one or more designated members of the Committee;
 - (4) may rely on the expertise and knowledge of Management, the OIG, and such consultants and experts that the Board approves for carrying out its responsibilities;

- (5) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and
- (6) may require any officer or employee of the Corporation or hired consultants to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VI. Duties and Responsibilities

OPERATIONS

The Committee:

- (1) shall periodically review and consider the Corporation's organizational structure and internal operations, including personnel policy issues;
- (2) shall periodically review the Corporation's compliance monitoring and enforcement efforts to ensure grantee compliance with the LSC Act, regulations, and other applicable laws;
- (3) shall ~~monitor~~ **annually review and consider** the Corporation's performance in achieving the goals established in ~~Strategic Directions~~ **the strategic plan of the Corporation, including consideration of the measures used to evaluate such performance**; and
- (4) shall, **as necessary**, review with management and the OIG matters pertaining to the manner in which management and the OIG are carrying out their responsibilities.

REGULATIONS

The Committee shall receive, propose, review, and discuss ~~regulatory policy~~, petitions for rulemaking, proposed regulations and priorities for rulemaking in conformance with the Corporation's Rulemaking Protocol, as may be revised by the Board from time to time. **The Committee shall also review and discuss the regulatory policies of the Corporation, and shall periodically review Board protocols and other policy statements directing the activities of the Corporation.**

OTHER RESPONSIBILITIES

The Committee:

- (5) shall regularly report Committee actions, and make recommendations the Committee deems appropriate, to the Board with respect to any matters the Committee deems necessary or appropriate or as requested by the Board; and
- (6) shall perform such other duties and responsibilities, consistent with this Charter, delegated to the Committee by the Board, **but shall not act nor be deemed to act as an executive committee of the Board.**

PERIODIC REVIEW OF CHARTER

The Committee shall periodically assess the adequacy of the Committee's Charter and report to the Board the results of the assessment, as well as any recommendations of proposed changes to the Charter.

**Protocol for the acceptance and use of private contributions to LSC
(for inclusion in the LSC Accounting and Administrative Manuals)**

From time to time, LSC may solicit private contributions for the conduct of LSC business and may, from time to time, receive unsolicited private contributions. This protocol shall apply to the solicitation, budgeting, expenditure of and accounting for private contributions.

A. Solicitation

Private contributions to LSC may not be solicited by Directors, officers or staff of LSC without the prior approval of the Board of Directors. Exempt from this requirement but subject to the approval of the President of LSC, are 1) solicitations directed to local merchants for modest donations of goods or funding for in-house staff events/functions and 2) fundraising among LSC staff for charitable causes.

B. Notification to Donors

Whenever a contribution to LSC is received by the Corporation, the Treasurer shall acknowledge the contribution and include the explanation required by law that the funds contributed to LSC may not be used in any manner that violates the LSC Act or any provision of the Appropriation Act that applies to LSC.

C. Budgeting of contributions

All private funds received by LSC for the same purposes, whether solicited or not, shall be accounted for separately. The Board of Directors shall approve the budgeting of such contributions using the same LSC Budget Guidelines that apply to all other LSC funds. If contributed funds come with restrictions, the General Counsel shall approve the legality of any such restrictions prior to the Board's acceptance and budgeting of the funds.

D. Expenditure from contributed funds

Contributed funds shall be spent in accordance with the LSC Administrative Manual and subject to the same approval requirement as contained in the Manual. In the event that contributed funds are to be used to pay for expenses for which federal funds may not be used, such contributed funds must be received and budgeted prior to any such expense being incurred. No federal funds shall be advanced to cover expense intended to be paid for by private contributions.

E. Should LSC engage in a solicitation of private contributions, the Comptroller shall provide an accounting of all additional expense to the Corporation for the solicitation.

**Protocol for the Acceptance and Use
of
Private Contributions of Funds to LSC**

(for inclusion in the LSC Accounting and Administrative Manuals)

From time to time, LSC may receive private contributions of funds for the conduct of LSC business. These private contributions may be in the form of grants for which LSC has applied, may be contributions other than grants that LSC staff or Board members have solicited, or may be unsolicited private contributions. This protocol shall apply to the solicitation, acceptance, budgeting, expenditure of and accounting for private contributions of funds (whether in the form of grants or other solicited or unsolicited contributions). In-kind contributions of goods or services are not subject to this protocol.

A. Grants

For the purposes of this protocol, a “grant” is defined as any funding opportunity made available by a third party pursuant to a Request for Proposal or some other equivalent application process.

Applications for grants for the following purposes are hereby approved by the Board of Directors (“Board”) and LSC may submit grant applications for funding for such purposes without further approval of but subject to at least ten business days’ prior notice to the Board:

- Grants for research projects related to legal services for people of limited means;
- Grants for projects to provide training and technical assistance to LSC grant recipients or staff;
- Grants for fellowships to take positions with LSC grant recipients;
- Grants for programs to educate the public about the role of LSC-funded legal services providers in their communities, LSC, access to justice issues, and matters related to access to justice;
-
- Grants for the advancement of *pro bono* programs serving the civil legal needs of persons of limited means; and
- Grants in support of LSC’s private development capacity, with use of this capacity to remain subject to this protocol.

Before any Director, officer or employee of LSC applies for any grant for a purpose not listed above, the proposed grant application must be presented to the Board for approval no later than ten business days in advance of submission of the application.

B. Solicitation of Non-Grant Contributions

Except as otherwise provided herein, no Director, officer or employee may solicit the private contribution of funds without prior approval of the Board.

Before any Director, officer or employee of LSC makes any solicitation the proposed solicitation must be presented to the Board for approval no later than ten business days in advance of the proposed solicitation.

Exempt from this requirement, but subject to the approval of the President of LSC, are 1) solicitations for modest donations not to exceed a total of \$5,000 per event for LSC staff events/functions and 2) fundraising among LSC staff for charitable causes.

C. Unsolicited Contributions

LSC Directors, officers and employees are authorized to discuss offers of unsolicited donations with the potential donor, but must notify such prospective donor that no donation may be accepted without the express approval of the LSC President or his/her designee. If the offered donation is less than \$5,000, the LSC President or his/her designee is authorized to accept the donation if he or she deems it appropriate. For offered donations of \$3,500 or more, the LSC President or his/her designee may accept such donations without further approval of but subject to at least ten business days' prior notice to the Board

D. Notification to Donors

Whenever a grant or other contribution to LSC is received by the Corporation, the Treasurer shall acknowledge the contribution and, so long as required by law, include a statement that funds contributed to LSC may not be used in any manner that violates the LSC Act or any provision of the Appropriations Act that applies to LSC.

E. Budgeting of contributions

All private funds received by LSC for the same purposes, whether in the form of grants or solicited or unsolicited contributions shall be accounted for separately. The Board shall approve the budgeting of such funds using the same LSC Budget Guidelines that apply to all other LSC funds. If contributed funds carry restrictions, acceptance of the funds is subject to a determination by the General Counsel that LSC may

legally accept the funds.

F. Expenditures from contributed funds

Contributed funds shall be spent in accordance with the LSC Administrative Manual and are subject to the same approval requirements as contained in the Manual. In the event that contributed funds are to be used to pay for expenses for which federal funds may not be used, such contributed funds must be received and budgeted prior to any such expense being incurred. No federal funds shall be advanced to cover any expense intended to be paid for by private contributions.

G. Accounting

Should LSC engage in a solicitation of private contributions, the Comptroller shall provide an accounting of any additional expense to the Corporation associated with the solicitation.

**Adopted on [insert date] and supersedes
Board Resolution nos. 2010-004 and 2008-013**



BOARD OF DIRECTORS

RESOLUTION

MODIFYING LSC'S PROTOCOL FOR ITS ACCEPTANCE AND USE OF PRIVATE CONTRIBUTIONS

WHEREAS, the Legal Services Corporation ("LSC" or "Corporation") may on occasion receive private contributions for permissible purposes;

WHEREAS, the Board of Directors ("Board") has established an Institutional Advancement Committee and is in the process of developing a development plan for the Corporation; and

WHEREAS, the Board has carefully studied the *Protocol for the Acceptance and Use of Private Contributions of Funds to LSC* ("the Protocol") and determined that certain revisions to the Protocol are warranted;

THEREFORE, BE IT RESOLVED that the Board adopts the attached modified protocol for the acceptance and use of private contributions to LSC.

BE IT FURTHER RESOLVED THAT Management is charged with ensuring that the amended protocol is followed and that any proposed future revisions to the protocol be subject by the Board.

Adopted by the Board of Directors
on July 27, 2012

John G. Levi
Chairman

Victor M. Fortuno
General Counsel & Corporate Secretary

***Corporation's Continuation
of Operations Plan***



Legal Services Corporation

Continuity of Operations Plans

Revised ~~August 2011~~ July 2012

Legal Services Corporation (LSC)
LSC CONTINUITY OF OPERATIONS PLANS**Continuity of Operations Plan**

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Overview

A. Organization Description

The Legal Services Corporation (LSC or Corporation) was established by an Act of Congress in 1974 and is the nation's largest single funder of civil legal aid programs for people in poverty. LSC currently provides grants to 134 independent, non-profit legal aid programs serving every county in the United States and the territories as well. LSC's mission is to promote equal access to justice in the United States and to fund high quality civil legal assistance to low-income persons throughout the country. LSC is responsible for overseeing grantees' compliance with legal requirements and prohibitions, for ensuring grantees' maintenance of the highest quality of service and professional standards, and for ensuring that grants are made so as to provide the most economical and effective delivery of legal assistance.

B. Purpose

To accomplish its mission, LSC must ensure that its operations are performed efficiently, and with minimal disruption -- especially during an emergency. This document provides planning and guidance to ensure that LSC is capable of conducting its essential mission and functions under all threats and conditions. While the severity and consequences of an emergency cannot be predicted, effective contingency planning can minimize the impact on the Corporation's mission, personnel, and facility.

The overall purpose of LSC's Continuity of Operations Plan (COOP or Plan) is to ensure the continuity of the Corporation's Mission Essential Functions (MEF) and identified essential functions under all conditions. The current changing threat environment and recent emergencies, including acts of nature, accidents, technological emergencies, and military or terrorist attack-related incidents, have increased the need for viable continuity of operations capabilities and plans that enable organizations to continue their essential functions across a spectrum of emergencies. These conditions, coupled with the potential for terrorist use of weapons of mass destruction, have increased the importance of having continuity programs that ensure continuity of essential operational functions.

C. Applicability and Scope

The Corporation's COOP is designed to maintain operational activities during emergency/disaster events, and seeks to effectively minimize system outages and down times while providing the highest level of service possible until normal operations fully resume. This plan also is intended to facilitate the response and recovery process.

This document applies to a full range of circumstances, from a short-term, localized event to a long-enduring regional emergency that may impact various operations, and applies to natural disaster events as well as man-made threats.

Events and hazards referenced in this plan include natural events, as well as intentional and non-intentional man-made events that could adversely affect the ability of the Corporation to perform

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its essential functions. Natural hazards are those where the occurrence is beyond the control of the Corporation, including earthquakes, floods, ice storms, winter weather, and external fires. Intentional man-made hazards are also beyond the direct control of the Corporation, and could include events such as external sabotage, and terrorism. Non-intentional man-made events, such as power outages, fires, explosions, equipment failures, or human errors may or may not be within the control of the Corporation. Any of these events could lead to loss of physical space, reduction in workforce, or loss of critical support services -- leading to the partial or complete activation of the COOP.

This Plan does not apply to temporary disruptions of service including minor IT system or power outages and any other scenarios where essential functions can be readily restored in the Corporation's Washington, DC facility.

D. Concept of Operations

In order to achieve its intended goals, a COOP must be maintained at a high level of preparedness and be ready for implementation with little or no warning. As such, LSC has developed a concept of operations, which describes the approach to implementing the COOP. The Plan can be fully implemented within twenty-four to forty-eight hours of activation and be capable of sustaining operations for up to thirty days. The broad objective of this COOP plan is to provide for the safety and well-being of the Corporation's employees, and enable continued operations during any crisis or event. Specific COOP plan objectives include the following:

- Protect life, health and safety; protect property; and return to normal or near normal operations as quickly as is feasible.
- Enable staff to perform essential functions;
- Identify essential personnel, back-up and supporting staff for relocation or for performance of essential functions; and
- Protect and maintain vital records, systems and equipment.

E. Planning Assumptions

This COOP is based on the following assumptions.

- A major emergency or COOP implementation triggering event could happen at any time.
- Emergencies or threatened emergencies may adversely affect LSC's ability to continue to support essential operations and to provide services or support to grantees or other constituents. The effect to the Corporation's continued delivery of services can include loss of physical space, reduction or loss of personnel, or loss of internal or external support services.
- Personnel and other resources from the Corporation and possibly other organizations outside the area affected by the emergency or threat would be made available, if required, to assist with essential operations.
- Mobile communications capabilities will be used in the interim to ensure direction and control of the COOP activation.
- An emergency condition may require immediate activation of the COOP.

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F. Essential Functions

The Corporation’s functions are categorized as follows:

- Category 1: Mission Critical – services that must remain operational at all times
- Category 2: Immediate Post-Incident – services that must be brought back on-line as soon as possible, and no later than 24 hours after an incident
- Category 3: Normal Services – services that need not be restored in full until the incident has passed and Category 1 and 2 services are operational.

Both Category 1 and 2 are considered essential functions. The positions necessary to carry out these functions, along with requisite support duties are listed in Annex A, Essential Functions.

The COOP is based on the principle that the critical mission of the Corporation is altered during emergency incidents to include the preservation of life, health and safety, the protection of property, and the return to normal or near normal operations as quickly as is feasible. It is understood that maintaining or quickly restoring communication is central to these emergency functions. The circumstances that determine the degree to which the general functions of the Corporation are curtailed or suspended are as follows:

- loss of ability to provide for the health and safety needs of LSC’s personnel;
- loss of use of LSC’s office space;
- loss of power;
- loss of telecommunications; and
- loss or inaccessibility of information technology systems

When confronted with events which disrupt the normal operations, the Corporation will provide those essential functions which must be continued even under the most challenging emergency circumstances. The Corporation has identified as essential functions only those most critical activities which: ensure the safety and security of LSC’s employees; support the maintenance and/or restoration of internal operations; and facilitate emergency response operations.

Essential functions are organized by area of responsibility. After addressing life and health safety concerns, the most critical system is the Corporation’s internal and external communications systems. The Corporation has identified critical processes, services, systems, and equipment necessary to support each essential function, as well as key personnel required. The prioritized listing of essential functions, and critical processes or services, personnel, records, equipment and resources, and systems supporting each essential function was determined through meetings of LSC’s management team

Essential Functions/ Recovery time Objectives

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Essential Function	Essential Personnel and Back-up	Vendors and External Contracts	Vital Records	Equipment	Systems	Recovery Time Objective (RTO)
Electrical		PEPCO?		Transformers, Power lines	Power grid	24 hours
Information Technology Communication Services			Databases	Servers (Internet; e-mail; voicemail)	E-mail, phone, Internet	24 hours (Possibly faster with Disaster Recovery site)
Information Technology Applications				Servers, d-bases	Banner, Network	48 hours
Water		DC Water & Sewer Authority			Distribution System	4 hours
Access Control		Datawatch	D-base	Readers, cards	Program software	24 hours

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G. Execution

The Corporation's President, or his or her designated successor, may activate the COOP. The COOP is activated based on known or anticipated threats and emergencies that may occur with or without warning. LSC will use a time-phased approach for implementation whereby critical resources are deployed early and other resources will follow as needed.

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Known threats and emergencies (with warning): There are some threats to operations that may afford enough advance warning to allow for the orderly alert, notification, evacuation, and if necessary, relocation of employees. Situations that might provide such warning include a hurricane, a transportation accident resulting in a threat of a release of hazardous material (HAZMAT), severe weather, or a threat of a terrorist incident.

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Unanticipated threats and emergencies (no warning): Incidents may also occur with no warning. In these circumstances, depending on the severity and anticipated duration of the emergency, the President would determine whether to activate the COOP – and, if so, at what point.

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LSC makes no distinction between duty hours and non-duty hours in its COOP.

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Implementation Scenarios

The Corporation is vulnerable to a full range of threats and hazards (man-made, natural and technological disasters). If properly implemented, this COOP will reduce or prevent disaster-related losses.

There are a range of plausible scenarios that could justify the implementation of the COOP, including the following:

- Scenario 1: Loss of Access to LSC's Office
- Scenario 2: Loss of Services Due to a Reduction of Workforce (e.g., illness; injury)
- Scenario 3: Loss of Services Due to Equipment or System Failure

Likewise, any of these scenarios might occur during or after traditional business hours.

COOP Plan Implementation

Implementation of the plan is based on three phases of operation: activation; alternate facility operations (via telework); and reconstitution.

Phase I – Activation

This COOP plan provides for the protection, accessibility, and recovery of the Corporation's vital records, systems, and equipment. These are records that if lost, irretrievable, or damaged would materially impair the Corporation's long-term ability to conduct operations.

Once notified that the COOP plan is implemented, a designated department staff person notifies essential personnel for affected essential functions.

Supervisors and managers make contact with staff under their span of control via use of staff contact list, and, if applicable, confirm the safe evacuation of staff from LSC's offices. Designated personnel at the department level are responsible for keeping personnel contact lists current and maintaining the lists in hard-copy off-site.

Communications systems must provide a means to contact employees, external organizations (e.g., grantees, government agencies, vendors), and the public. To ensure communications during COOP events, the Corporation has identified primary and alternate modes of communication.

Phase II – Operations Via Alternate Location/Telework

In the event that there is a loss of access to LSC's office building, to the extent practicable, personnel should plan to work remotely, accessing LSC's computer network through Citrix or Outlook Web Access connections, until it is feasible and safe to return to LSC's office building. (Please refer to the Office of Information Technology's COOP for additional details regarding remote access log-in instructions.)

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Phase III – Reconstitution

Essential personnel continue to provide essential services.

LSC’s President or designee informs staff that the threat of, or actual emergency, no longer exists, and provides instructions and timeline for resumption of normal operations. Announcement is disseminated via established notification procedures (telephone/text message/e-mail trees).

Corporation reports the status of reconstitution to other key contacts (grantees, vendors, local jurisdictions, vendors, partners), as applicable.

Reconstitution Process: The Corporation’s facilities management representatives must evaluate the physical structure and condition of the facility, and designate it safe to occupy. The building will not be declared habitable nor can internal functions resume until the Corporation’s President or designee is satisfied that operations can be restored without reasonable fear of a re-evacuation.

Reconstitution Procedures: The Corporation will establish specific actions to ensure a timely and efficient return of communications, direction and control, and, if applicable, transfer of vital records to LSC’s office building.

After-Action Review and Remedial Action Plans. The Corporation will assess all phases and elements of an activated COOP and prepare recommendations for improvement.

H. Leadership

Orders of Succession

There may be instances when an individual who is designated as a leader is unable to fill their leadership role. Because the role is essential to the department being able to complete its critical missions, a successor will need to assume that leadership role.

A successor will assume the duties of the leadership role when the usual leader is not able to be contacted by usual methods (e.g., telephone, cellular telephone, text message, e-mail, etc.), and will relinquish leadership duties when the usual leader is contacted or until a permanent successor has been named by the President or the President’s designee. Permanent successors to Officers of the Corporation or to the President require approval of the Board of Directors.

Employees responsible for maintaining vital systems and records shall be considered key department positions for purposes of succession planning.

The order of succession applies in the event that any of those listed are unable to be reached or are otherwise incapacitated.

Delegations of Authority

Designated essential employees and their successors, upon appointment to an essential position, shall have the full authority and responsibility to carry out their essential functions unless otherwise indicated in this plan. “Succession,” in this context, pertains only to the activation of

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Comment [RS5]: Determine who should be involved in this review/assessment.

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this COOP plan and the performance of the essential functions listed herein for the duration of COOP plan activation, or until relieved by proper authority.

Orders of Succession

<u>Position</u>	<u>Successor 1</u>	<u>Successor 2</u>	<u>Successor 3</u>
<u>President</u>			
<u>Vice President and General Counsel</u>			
<u>Inspector General</u>			
<u>Treasurer/Comptroller</u>			
<u>IT Director</u>			
<u>HR Director</u>			
<u>Chief of Staff/Special Assistant to the President</u>			
<u>Special Assistant to the President</u>			

Comment [RS6]: Need to establish order of succession; add Vice President for Programs yet; others?

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I. COOP Plan Maintenance and Testing

To maintain viable COOP capabilities, the Corporation is continually engaged in a process to designate essential functions and resources, define short- and long-term COOP goals and objectives, forecast budgetary requirements, anticipate and address issues and potential obstacles, and establish planning milestones. The following is a proposed list of activities necessary to monitor the dynamic elements of LSC's COOP:

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<u>Activity</u>	<u>Tasks</u>	<u>Frequency</u>
<u>COOP review and update</u>	<ul style="list-style-type: none"> <u>Review entire plan for accuracy.</u> <u>Incorporate lessons learned and changes in policy and philosophy/strategy.</u> <u>Manage distribution.</u> 	<u>Annually</u>
<u>Maintain orders of succession and delegations of authority</u>	<ul style="list-style-type: none"> <u>Identify current incumbents.</u> <u>Update rosters and contact information.</u> 	<u>Semi Annually or upon relevant personnel changes</u>
<u>Monitor and maintain vital records management</u>	<ul style="list-style-type: none"> <u>Monitor volume of materials.</u> <u>Update/remove files.</u> 	<u>Ongoing</u>
<u>Test Remote Access Capabilities</u>	<ul style="list-style-type: none"> <u>Test all systems, IT and communications</u> 	<u>Ongoing</u>

Activity	Tasks	Frequency
<u>Train new key personnel</u>	<ul style="list-style-type: none"> <u>Provide orientation.</u> <u>Schedule participation in training and exercises.</u> 	<u>Within 30 days of appointment</u>
<u>Orient new leadership and senior management</u>	<ul style="list-style-type: none"> <u>Brief officials on COOP philosophy strategy.</u> <u>Brief each position on his/her COOP responsibilities.</u> 	<u>Within 30 days of appointment</u>
<u>Plan and conduct exercises</u>	<ul style="list-style-type: none"> <u>Conduct internal exercises.</u> 	<u>Annually or as needed</u>
<u>Review and Approve COOP Plan</u>	<ul style="list-style-type: none"> <u>Review COOP Plan changes</u> 	<u>As needed</u>

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OPERATIONAL CHECKLIST

<u>Item</u>	<u>Task</u>	<u>Task Assigned To</u>	<u>Date and Time Completed</u>
<u>Activation</u>			
<u>1</u>	<u>Receive notification of emergency</u>		
<u>2</u>	<u>If necessary, conduct evacuation</u>		
<u>3</u>	<u>Account for all staff</u>		
<u>4</u>	<u>If necessary, contact Emergency Responders (Fire, Police, EMS)</u>		
<u>5</u>	<u>Ensure that safety measures are put into effect</u>		
<u>6</u>	<u>Contact building maintenance for shutting down utilities to limit further damage</u>		
<u>7</u>	<u>Direct and assist emergency personnel as required</u>		
<u>8</u>	<u>Activate COOP Plan as necessary</u>		
<u>9</u>	<u>If necessary, invoke Orders of Succession</u>		
<u>10</u>	<u>Initiate notification of all staff including continuity personnel</u>		
<u>11</u>	<u>Assemble supporting elements required for re-establishing and performing essential functions at continuity facility location, if applicable:</u> <ul style="list-style-type: none"> ■ <u>Vital files, records and databases</u> ■ <u>Critical equipment</u> 		
<u>12</u>	<u>Notify all support organizations and critical contacts of COOP activation.</u>		
<u>13</u>	<u>Develop and deliver status report</u>		
<u>Continuity Operations</u>			
<u>14</u>	<u>Develop shift rotations, as required (if appropriate)</u>		
<u>15</u>	<u>Determine which mission essential functions have been affected</u>		
<u>16</u>	<u>Develop and deliver status report</u>		

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<u>Item</u>	<u>Task</u>	<u>Task Assigned To</u>	<u>Date and Time Completed</u>
<u>17</u>	<u>Prioritize remaining essential functions for restoration</u>		
<u>18</u>	<u>Track status and restoration efforts of all essential functions</u>		
<u>19</u>	<u>Coordinate procurement of additional equipment, as required</u>		
<u>Reconstitution</u>			
<u>20</u>	<u>Appoint reconstitution team</u>		
<u>21</u>	<u>Survey condition of LSC's office building and determine feasibility of salvaging, restoring or returning to original facility when emergency subsides or is terminated</u>		
<u>22</u>	<u>Develop long term reconstitution and recovery plans should original facility cannot be re-occupied.</u>		
<u>23</u>	<u>Inventory and salvage useable equipment, materials, records and supplies from damaged facility, if possible</u>		
<u>24</u>	<u>Evaluate original or new facility to assure that all critical services and support are available and operational.</u>		
<u>25</u>	<u>Conduct transition of mission essential functions, personnel and equipment from continuity facility (telework locations) back to designated facility</u>		
<u>26</u>	<u>Conduct transition of remaining essential function, personnel and equipment from continuity facility (telework locations) back to designated facility</u>		
<u>27</u>	<u>Schedule and conduct initial debrief with staff</u>		

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Questions, comments, and suggestions for improvement of the Corporation's COOP should be submitted to:

LIST ALL RELEVANT CONTACT INFORMATION

Comment [RS7]: Identify recipient for COOP revisions

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Board of Directors (Board) Continuity of Operations Plan

Purpose

The COOP provides guidance to the Corporation's Board of Directors for an effective response to an emergency situation in which the LSC building is destroyed or becomes uninhabitable for a period of more than a few days. Each Board Member will be given a copy of the COOP plan and will be asked to keep it at home, either in hard copy or electronic form.

Planning Assumptions

In the event of a declared emergency affecting the District of Columbia, and the consequent activation of the Continuity of Operations Plan, LSC's President (or successor, in capacity as Acting President) has the independent authority to, and shall, attempt to contact all Directors by whatever practicable means and convene a meeting in person, via telephone or via electronic communications, within 48 hours after the activation of the COOP, and following a meeting of the Executive Team (including, as necessary, designated successors). This emergency meeting of the Board shall be deemed closed, and public notice of the meeting shall be deemed waived if it is held in accordance with these procedures and related bylaws, as certified by the General Counsel (or successor, in capacity as Acting General Counsel). Minutes shall be kept of this meeting by the Corporate Secretary (or successor of same, or by any individual designated by the Director acting as Chair of meeting). An effective quorum for a meeting of the Board under emergency conditions shall consist of at least 2 Directors, and the President or Acting President shall be authorized, according to ~~the~~ his or her discretion, to exercise a proposed and voted-upon course of action in the event of a tie vote.

In the absence of the Chair and Vice-Chair, the order of succession for Acting Chair, for purposes of an emergency meeting, shall proceed with Committee Chairs in the following precedence: (1) those Committee Chairs of the same political party as the duly-elected Board Chair, in order of the date of the establishment of the Committees they chair, earliest first; (2) other Committee Chairs, in order of the date of establishment of the Committees they chair, earliest first; or (3) length of service on the LSC Board of Directors, longest serving first. The Board may vote in emergency meeting to designate any Director as Acting Chair, who shall continue to serve as such in the absence of the Chair or Vice-Chair, or by action in a non-emergency meeting of the Board. The emergency Board meeting has the authority to set the time, place, and manner of a further such meeting, provided that there is a continuing duty on the part of the Corporation to use all practicable means to contact all Directors for the purposes of notice, and that the conditions of emergency continue.

The emergency Board meeting shall be authorized to confirm those individuals designated by succession as Officers of the Corporation, in acting appointments with full authority, until such time as the Board acts otherwise, and to ratify actions taken by agents of the Corporation prior to the emergency meeting.

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The Board, meeting in emergency session, also has authority to allocate funds from the Management and Grants Oversight (MGO) budget to the preservation of the Corporation, the health, safety and welfare of its employees, and to corporate continuity of operations in accord with the approved COOP. The Board has authority to disburse any pre-existing emergency or discretionary funds, such authorization being either for the emergency response and recovery of the Corporation, or for the use of its grantees affected by the emergency. Furthermore, the Board has authority to permit the President or Acting President, at his or her discretion, to seek from Congress (or the appropriate governmental body) the necessary flexibility for the use of other appropriated funds for emergency response and recovery. Any such disbursements or re-allocation shall be approved by both the President or Acting President, and the Treasurer of the Corporation (or successor, as Acting Treasurer).

Mission Essential Functions

In an emergency, as many members of the Board as possible need to meet as quickly as possible to assess the situation, understand the extent of the damage and anticipated duration of the emergency situation, and, in turn, to:

- (1) confirm the order of succession and ratify any emergency acts; and
- (2) provide authority and funds to restore the Corporation’s normal operations.

During the emergency meeting, or as soon as practicable thereafter, the Board and the Corporation’s Officers will determine an appropriate schedule for ongoing status reports.

Alert and Initial response and activation of plan when LSC offices are evacuated or if the office cannot open on a workday

Emergency Contact Information

Name	Phone	E-mail
<u>John G. Levi</u>	<u>(H)</u> <u>(C)</u>	
<u>Martha Minnow</u>	<u>(H)</u> <u>(C)</u>	
<u>Sharon L. Browne</u>	<u>(H)</u> <u>(C)</u>	
<u>Robert J. Grey Jr.</u>	<u>(H)</u> <u>(C)</u>	
<u>Charles N.W. Keckler</u>	<u>(H)</u> <u>(C)</u>	
<u>Harry J.F. Korrell III</u>	<u>(H)</u>	

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<u>Victor B. Maddox</u>	(H) (C)	
<u>Larue Laurie Mikva</u>	(H) (C)	
<u>Father Pius Pietrzyk</u>	(H) (C)	
<u>Julie A. Reiskin</u>	(H) (C)	
<u>Gloria Valencia-Weber</u>	(H) (C)	

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Enforcement Mechanisms

FNPRM

LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1618, and 1623

**Termination, Limited Reductions in Funding, and Debarment Procedures;
Recompetition; Enforcement; Suspension Procedures**

AGENCY: Legal Services Corporation

ACTION: Further Notice of Proposed Rulemaking

SUMMARY: This Further Notice of Proposed Rulemaking (FNPRM) proposes modifications to the January 31, 2012, NPRM regarding amendments to the Legal Services Corporation's regulations on termination procedures, enforcement, and suspension procedures. LSC seeks comments limited to the substantively new materials as indicated by the questions in the Supplementary Information.

DATES: Comments on the FNPRM are due [insert date 60 days from date of publication].

ADDRESS: Written comments may be submitted by mail, fax, or email to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; 202-295-1623 (phone); 202-337-6519 (fax); mfreedman@lsc.gov.

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

SUPPLEMENTARY INFORMATION:

Introduction

The Legal Services Corporation (LSC) Act (the Act) provides general authority to the Corporation “to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act].”¹ On January 31, 2012, LSC published in the Federal Register at 77 Fed. Reg. 4749 a NPRM proposing changes to LSC’s enforcement mechanisms to add a lesser reduction in funding option and extend the time for suspensions from 30 to 90 days. The NPRM provided history and background that is not repeated herein.

Nineteen comments were submitted. The comments are available in the open rulemaking section of LSC’s website at www.lsc.gov.

<http://www.lsc.gov/about/regulations-rules/open-rulemaking>

On July 18, 2012, the Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board) met to discuss the comments. Only the comment of the Office of Inspector General (OIG) supported the proposal as written, although the OIG recommends a rule providing for suspensions to remain in place until corrective actions are taken, and the OIG questioned whether the proposed language regarding imposing immediate special grant conditions was unduly restricted. Seventeen of the other comments opposed the proposed changes. Those comments include ones from LSC recipients, coalitions of legal aid programs, the National Legal Aid and Defender Association (NLADA), and the New York State Bar Association Committee on Legal

¹ LSC Act, section 1006(b)(1)(A); 42 U.S.C. 2996e(b)(1)(A).

Aid. The American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID) did not oppose the rulemaking, but joined with the other seventeen comments in recommended changes to the proposed language if LSC proceeds with rulemaking. These comments had a number of common themes. Fifteen of the comments were two or three pages. The ABA, NLADA, and Colorado Legal Services provided more extensive comments (five to seven pages). The OIG's comments in support of the rule were sixteen pages in length. This further notice of proposed rulemaking (FNPRM) provides revisions to the proposed language for further comment. The final rule will include a discussion of all of the comments received on both the NPRM and the FNPRM.

On July 27, 2012, the Committee met again to discuss the comments and LSC Management's recommendations. The Committee voted to recommend to the Board publication of these further revisions to the proposal based on consideration of the comments and recommendations of Management. On July 27, 2012, the Board voted to publish this FNPRM for public comment on the specific items identified below. In addition to this FNPRM, LSC is publishing on its website redlined versions of the regulations showing each change. Those documents are available in the Open Rulemaking section of www.lsc.gov.

<http://www.lsc.gov/about/regulations-rules/open-rulemaking>

LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. In accordance with the requirements of Part 1618, LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance

training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning or renewal of a grant. Several additional enforcement tools are provided for in LSC-adopted regulations and are available to the Corporation to address significant non-compliance by a recipient. In particular, LSC has adopted suspension procedures (45 CFR part 1623) and questioned-cost procedures (45 CFR part 1630). LSC has also adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or in part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. Under the grant-termination provisions, a reduction of five percent or more of a recipient's funding is considered a termination and can be implemented only in compliance with the termination procedures.² Reductions of funding of less than five percent are not considered terminations. In order to reduce a recipient's funding by less than five percent without using the 1606 termination procedures, additional procedures have to be established by rulemaking.³ LSC has not yet adopted regulations establishing such standards and procedures. LSC also has the authority under Part 1606 to debar recipients from eligibility to receive future grants.

The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but

² 45 CFR 1606.2(d).

³ 45 CFR 1606.2(d)(2)(v).

there have been exceptions. LSC is now considering adding enforcement tools to increase LSC's flexibility in addressing compliance issues.

In light of its experience with the existing enforcement mechanisms, discussed more fully in the NPRM, LSC is proposing to amend its regulations at 45 CFR parts 1606, 1618, and 1623 to adopt standards and procedures for limited reductions in funding, to allow for the imposition of SGCs during a grant year, and to amend the maximum suspension period from 30 to 90 days. LSC is not modifying the proposed changes to Part 1623 as set out in the NPRM; no further comments on Part 1623 are requested. The proposed changes and the modifications to those changes in this FNPRM are discussed in greater detail below.

Amending Part 1606 to Include Standards and Procedures for Limited Reductions in Funding

LSC proposed adding to Part 1606 a new definition for lesser reductions in funding and a new § 1606.15 to provide procedures for imposing them. The proposed procedures were based on the suspension procedures in Part 1623, which provide a significant opportunity for recipient input and due process without being unduly complex. Those proposed procedures would have permitted the recipient to request an informal conference regarding the proposed reduction in funding. There were no further avenues of appeal.

Many comments raised the concern that the proposed procedures were inadequate for lesser reductions in funding because they lacked an appeal of the informal conference and did not include review by an impartial person. Suspensions withhold funds from a recipient with the expectation that the funds will be provided when the suspension ends.

In contrast, terminations, disallowed costs, and lesser reductions in funding all involve a nonrecoverable loss of funding for the recipient. For terminations of five percent or greater, the recipient has a right to appeal a determination to an impartial hearing officer appointed by the LSC President. The hearing officer's decision is then reviewed by the LSC President, who makes the final decision.⁴ For disallowed costs under Part 1630, the recipient has a right to appeal a disallowed cost decision to the LSC President. The President may act on the appeal only if he or she has not "had prior involvement in the consideration of the disallowed cost"⁵ Otherwise, "the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal."⁶

LSC agrees that some appeal is appropriate for lesser reductions. That appeal should also provide for review by someone was not involved in the prior LSC decisions regarding the preliminary and final determinations. The proposed language below would add an appeal to the LSC President, who would decide the matter unless he or she was involved in those prior decisions. Alternately, the LSC President can appoint another LSC senior employee who was not involved in those prior decisions.

The comments also raised a number of questions regarding the proposed definitions and procedures. In reviewing the comments, LSC determined that a separate set of procedures for lesser reductions creates unnecessary confusion in the rule. This revision uses the existing Part 1606 procedures for preliminary determinations and

⁴ 45 CFR 1606.8–10.

⁵ 45 CFR 1630.7(f).

⁶ *Id.*

informal hearings. Appeals of terminations and debarments would then continue to have the existing process and rights. Appeals of lesser reductions would go directly to the LSC President.

In the proposed § 1606.15(c), the NPRM cross-referenced the § 1606.3(b) criteria for substantial violations and used those criteria for lesser reductions. The proposed language below eliminates the new § 1606.15 and moves the § 1606.3(b) criteria to a new definition of “substantial violations” for use throughout Part 1606. This approach is designed to improve the structure of the rule. No changes are made to the language, and no substantive changes are intended by this restructuring.

Some deadlines have been adjusted for uniformity in the rule.

Questions on Which Comments Are Sought

Q1: Comments are sought on the question whether the lesser reduction procedures are better handled as proposed in the NPRM or as proposed herein.

Q2: Comments are sought on the changes to the procedures affecting lesser reductions. No further comments are sought regarding the underlying decision to adopt a lesser reductions option or the use of the existing § 1606.3(b) criteria for lesser reductions, which is unchanged from the NPRM. Those comments on the NPRM are already in the rulemaking record.

Q3: There are no substantive changes to the rules for terminations or debarments. Comments are sought on the question whether any of these proposed changes to the structure of the rule would result in substantive changes affecting terminations or debarment. No other comments regarding the existing rules for terminations or debarments are sought.

Q4: There are new definitions added for clarity. Comments are sought on the new definitions but not on definitions that are moved without change from other sections of the existing regulation or from the NPRM proposed language.

Q5: Comments are sought on the proposed final appeal process.

Section-by-Section Analysis of Part 1606

Section 1606.1 Purpose

The NPRM did not amend this section. The proposed language below amends paragraph (b) to add to the purpose of the rule lesser reductions in funding. It also states that the procedures provided are proportional to the proposed action rather than uniform for all actions. This takes the place of § 1606.15(1) in the NPRM.

Section 1606.2 Definitions

The NPRM added a definition of limited reduction in funding as a new paragraph (c). The proposed language below renumbers the following paragraphs. It also adds language from paragraph (d)(1) for terminations regarding whether a lesser reduction will affect funding beyond the current grant year. That addition makes clear that the two options function the same in this regard. No substantive changes are made to the definition.

New paragraphs (f), (g), and (h) are added to relocate definitions of violations, substantial violations, and substantial noncompliance. No substantive changes are made to these terms. They are moved from §§ 1606.3(a)(1), (b), and (c) into the definitions section so that they can be easily referenced for all of the available actions in the rule. This eliminates the cross-reference to these terms in § 1606.15(b) of the NPRM. It also

responds to some of the comments by making clear that the threshold for a substantial violation is the same for terminations and for lesser reductions.

New paragraph (i) adds a definition of the “Corporation” for purposes of taking actions under the rule, which permits elimination of the “designated employee” under § 1606.6(a). For purposes of making decisions regarding terminations, debarments, or lesser reductions, the Corporation must act through someone at the level of a deputy director or higher. This change addresses concerns expressed by comments about low-level employees making decisions to reduce funding. It also adds internal consistency to the rule instead of referring to the Corporation in some places and to the designated employee in others. This definition is a change to the NPRM and to the existing rule, although in practice LSC does not make decisions of this magnitude through anyone below the level of a deputy director.

New paragraph (j) defines when materials are considered received for purposes of this part. This is added for clarity. It is intended to make clear that physical delivery with confirmation from the delivery service is always sufficient. Alternate modes of delivery, such as e-mail or fax, are acceptable, but they require confirmation in writing by a person at the recipient. Automated “confirmations” from fax machines or e-mail systems do not guarantee that the document was in fact seen by a person at the receiving end.

New paragraph (k) defines days through reference to the rules for computing time in the Federal Rules for Civil Procedure, with an exception for excluding weekends and legal holidays for computing business days. This is added for clarity. In 2009, the Federal rules eliminated the use of a business days rule for periods of ten days or fewer

and lengthened some of the shorter deadlines accordingly. LSC is keeping this distinction here because, unlike the Federal rules, so many of the deadlines are 10 days or fewer. The revised sections of the rule specify time in calendar days or business days. References to days in other sections of the rule should be treated as calendar days, unless specified otherwise.

§ 1606.3 Grounds for a termination or a lesser reduction in funding.

The proposed grounds for lesser reductions in the NPRM at §§ 1606.15(a) and (b) have been moved into this section, which is renamed accordingly. The definition of a substantial violation has been moved from this section into the new definitions in § 1606.2. As discussed above, no substantive changes are intended, and this restructuring should add clarity to the rule.

§ 1606.4 Grounds for debarment.

There are no changes to this section and it is not reprinted in this notice. LSC considered moving the definition of “good cause” from this section to the definitions for structural consistency. LSC did not do so because the definition applies only to debarments; moving it would not add clarity and might add confusion to the rule.

§ 1606.5 Procedures.

This section is renamed to make it applicable to all actions under the rule, not only to terminations and debarments. The existing language is renumbered as paragraph (a). Paragraph (b) is added for situations involving lesser reductions in funding. It requires that LSC designate a senior LSC employee who will be able to meet the § 1606.10(d) requirements for handling a final review of a lesser reduction in funding.

§ 1606.6 Preliminary determination.

In the NPRM, § 1606.15(d) provided requirements for notices of preliminary and final determinations for lesser reductions that were worded slightly differently than this section, but they appeared to be substantively identical. The NPRM language is eliminated and merged in paragraph (a) with the existing language for preliminary determinations in this section to provide a process applicable to terminations, debarments, and lesser reductions. Specific references to procedural rights in other sections are replaced with a general reference to procedural rights. No substantive changes are intended by these changes to paragraph (a).

The reference to a “designated employee” are eliminated in favor of a definition of the Corporation for decision-making purposes in § 1606.2(i), as discussed above.

Language is added to paragraph (b) to affirmatively require LSC to provide the recipient with the final determination if there is no further review. This ensures that there is no confusion in situations in which the recipient does not respond to the preliminary determination. Paragraph (b) is also modified to state that LSC has the discretion to make the preliminary determination final when there is no request for a review. This change is intended to ensure that LSC retains the discretion to consider factors that come to light after issuing the preliminary determination. For example, a recipient might be in such turmoil that it fails to request review, but the local bar association requests that LSC forestall issuing a final determination. Under the existing rule and the NPRM, LSC might not have that discretion.

§ 1606.7 Informal conference and review of written materials.

The NPRM provided in § 1606.15(e), (f), and (g) procedures for an informal conference to review a proposed lesser reduction in funding. The NPRM used the

language of Part 1623 as the basis for the informal conference review of a proposed lesser reduction in funding. The proposed language was substantively similar to the § 1606.7 informal conference for terminations and debarments. To simplify the rule, the proposed parallel provisions in § 1606.15 are eliminated in favor of using the existing § 1606.7 procedures.

No substantive changes are made to this section with the exception of the addition of an option of a paper review for terminations and debarments and the increase of some time limits from the existing rule and the NPRM. The current rule for terminations and debarments provides for an informal conference. Part 1623 also provides for an informal conference for review of proposed suspensions, but it adds an option of submission of written materials without a conference. The NPRM used the same language for lesser-reductions conferences. The revised language adds the option of a review of written materials for terminations and debarments as well as for lesser reductions. The NPRM provided that the informal conference would take place within five days of the recipient's request. This revision provides that LSC will notify the recipient within five business days of the time and place of the conference. This provides more scheduling flexibility.

Paragraph (b) provides the recipient with the right to request an in-person conference, but otherwise allows the conference to be held through alternative methods such as a teleconference. For an in-person meeting, some of the participants may attend through alternative methods. This is added to ensure that the recipient has the right to a face-to-face meeting, but it also makes clear that the recipient and LSC can reduce the cost and burden of the conference through alternative methods.

Paragraph (e) provides that the final determination must provide the same type of details as the preliminary determination. This is similar to the requirements of § 1606.9(b), which apply to recommended decisions by hearing officers.

§ 1606.8 Hearings for Terminations or Debarments.

No substantive changes are made to this section. The title and paragraph (a) are updated to state that this section applies only to terminations and debarments. These hearings are not available for lesser reductions in funding. As discussed in the NPRM, the purpose of lesser reductions is to provide LSC with a means of taking financial action against a recipient in an amount of less than five percent, without the full hearing procedures required for terminations of five percent or greater.

§ 1606.9 Recommended decisions for Terminations or Debarments.

No substantive changes are made to this section. The title and paragraph (a) are updated to state that this section applies only to terminations and debarments. This section involves decisions after hearings under § 1606.8, which are not available for lesser reductions in funding.

§ 1606.10 Final decision.

This section is updated to add direct review by the LSC President of final determinations of lesser reductions in funding. Currently this section provides only for review by the LSC President of recommended decisions of impartial hearing officers under § 1606.9, which are not available for lesser reductions. The time limits of ten calendar days are expanded to ten business days to ensure there is sufficient time for the recipient to draft and deliver the request for review by the President, which “shall state in

detail the reasons for seeking review.”⁷ At the end of the year, the holidays of December 25 and January 1 can reduce ten calendar days to only six business days.

Paragraph (c) adds a requirement that the recipient be able to obtain a copy of the written record on which the President based his or her decision. This requirement is based on a similar provision in § 1630.7(g) regarding disallowed costs reviews.

A new paragraph (d) is added providing for appeals of final determinations for lesser reductions in funding. The LSC President, or other senior LSC employee, will conduct the review and make a final decision regarding the proposed lesser reduction in funding. As discussed above, prior to the section-by-section analysis, the final review should be handled by someone who did not actively participate in making the decisions regarding the preliminary determination or the final determination. This requirement ensures that there is at least one level of review involving a fresh look at the situation, similar to the § 1606.8 requirements for terminations and the § 1630.7 requirements for disallowed costs.

Normally, this final review and decision would be handled by the President. LSC expects that the Vice President for Grants Management or the Director of the Office of Compliance and Enforcement will usually handle preliminary determinations, informal conferences, and final determinations for lesser reductions in funding. Nonetheless, these are significant actions that the President is likely to be kept informed about throughout the process. The President is not disqualified under paragraph (d) merely because he or she is briefed about the situation and options, asks questions, and did not object to the

⁷ 45 CFR 1606.10(b).

prior lesser reduction decisions and proceedings. Nor is he or she disqualified if the recipient or other parties contact him or her directly prior to a final appeal.

Paragraph (e) (renumbered) adds a requirement that a final decision reviewing a determination of a lesser reduction shall meet the specificity requirements of § 1606.6(a). This provides a parallel requirement to the existing requirement that final decisions reviewing a hearing officer's recommendation shall meet the specificity requirements of § 1606.9(b).

§ 1606.13 Interim and termination funding; reprogramming.

There are no changes to this section from the NPRM. They are repeated here in order to provide all of the revisions of Part 1606 proposed by both the NPRM and this FNPRM. No comments are sought on this section.

§ 1606.15 Limited reductions of funding.

The NPRM proposed adding a new section. As discussed above, all of the proposed provisions are now incorporated into the existing provisions of this part. There is no proposed § 1606.15 in this FNPRM.

Amending Part 1618 to Permit the Imposition of Immediate Special Grant Conditions

The NPRM proposed amending Part 1618 to provide clear authority to impose special grant conditions in the middle of a grant, rather than only at renewal or competition. The OIG expressed concern that the Part 1618 threshold might unduly restrict the use of these immediate special grant conditions. The proposal has been revised to specify that immediate special grant conditions are available for corrective actions after LSC has determined that a violation exists. This enables LSC to convert corrective actions required by the Office of Compliance and Enforcement into special

grant conditions immediately rather than waiting for the next grant renewal or award. This addition does not effect LSC’s existing authority to impose special grant conditions during renewal, competition, or otherwise.

Additionally, during review of Part 1618 it became apparent that the language of Part 1618 is outdated. It has not been amended since 1976. Both Part 1606—Terminations and Part 1623—Suspensions refer to compliance with “a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation.”⁸ These rules were extensively updated in 1998. Part 1618 refers only to violations of “the Legal Services Corporation Act or the rules and regulations issued by the Corporation.”⁹ LSC proposes amending Part 1618 to conform to the language used in the other, later adopted, regulations to conform to existing practice.

Proposed § 1618.5(b) permits LSC to impose a lesser reduction in funding after “attempts at informal resolution have been unsuccessful.” Informal resolution includes remedial actions, preventive actions, and sanctions. So, for example, if a recipient has persistently and intentionally used LSC funds for grassroots lobbying, then LSC could ultimately proceed to termination or debarment. Section 1618.5(b) requires LSC to attempt to resolve the situations informally before beginning an enforcement action. LSC could demand that the recipient cease such activities, put in place measures to

⁸ 45 CFR 1606.1(a) and 1623.1(a).

⁹ 45 CFR 1618.2.

ensure that such activities do not recur, and accept a lesser reduction in funding as a sanction. If the recipient did not agree to all three actions during attempts at informal resolution, then LSC could proceed with suspension, termination, and/or a lesser reduction in funding. Furthermore, if attempts at informal resolution are unsuccessful, then LSC may proceed with actions that are more consequential than those pursued during those unsuccessful attempts. Thus, in this example, LSC could proceed with a termination of five percent or greater, even if it offered the recipient the option of resolving the matter through acceptance of a reduction in funding of less than five percent. There are no changes to the rule required for this application.

Question on Which Comments Are Sought

Q6: Comments are sought on the new proposed language for Part 1618.

Section-by-Section Analysis of Part 1618

§ 1618.1 Purpose.

Reference to the requirements of the LSC Act are updated to refer to the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline, or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation. This conforms Part 1618 to Part 1606 and Part 1623.

§ 1618.2 Definitions.

The existing definition of the term “Act” as referring to the LSC Act, rules, and regulations is removed because it was confusing and inconsistent with LSC’s current governing laws, many of which appear in appropriations statutes and not the LSC Act, and with Part 1606 and Part 1623. A new paragraph (a) is added defining the term “LSC

requirements” using the language from Part 1606 and Part 1623. A new paragraph (b) is added to make clear that a violation refers to a violation of the LSC requirements.

§ 1618.3 Complaints.

The reference to a violation of “the LSC Act” is replaced with reference to the new definition of a “violation.”

§ 1618.4 Duties of Recipients.

References to a violation of the LSC Act are replaced with references to the new definition of a violation. Paragraphs (a) and (b) are renumbered as (1) and (2) of a new paragraph (a). The former paragraph (b) is split into (a)(2) and (a)(3). These changes add clarity without substantive alternations to the rule. The new (a)(2) is amended to clarify that the recipient has the discretion to determine whether a violation by a recipient’s employee merits a sanction imposed by the recipient on the employee under the circumstances. Some violations can be fully addressed by the recipient without any sanction. This is not meant to change the substantive requirements of this paragraph. Paragraph (c) is renumbered as paragraph (b). A new paragraph (c) is added to clarify that these requirements do not, by themselves, create substantive rights for recipient employees. A failure to consult with LSC under this section does not nullify a recipient’s employment action. Rather, it is a matter between LSC and the recipient.

§ 1618.5 Duties of the Corporation.

References to a violation of the LSC Act are replaced with references to the new definition of a violation. Paragraph (a) is amended to make clear that the Corporation’s investigation may be limited to determining that the recipient is taking sufficient action. This is not a substantive change. Paragraph (c) is added regarding immediate special

grant conditions. As discussed above, these would be available for any violation for which LSC has determined that corrective action is necessary. Currently LSC makes those determinations through normal procedures by the Office of Compliance and Enforcement. The thresholds in paragraph (b) for further actions such as suspensions or terminations would not apply to immediate special grant conditions.

For reasons set forth above, and under the authority of 42 U.S.C. §2996g(e), LSC proposes to amend 45 CFR chapter XVI as follows:

PART 1606 – TERMINATION, LIMITED REDUCTION IN FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

1. The authority citation for Part 1606 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1) and 2996f(a)3; Pub. L. 105-199, 111 Stat 2440, Secs. 501(b) and (c) and 504; Pub. L. 104-134, 110 Stat. 1321.

2. The heading for part 1606 is revised to read as set forth above.

3. Amend § 1606.1 by revising paragraph (b) to read as follows:

§ 1606.1 Purpose

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a lesser reduction in funding; and

4. Amend § 1606.2 by adding paragraph (c), renumbering paragraphs (c) and (d) as (d) and (e), revising new paragraph (e), and adding paragraphs (f) through (k) to read as follows:

Sec. 1606.2 Definitions

* * * * *

(c) *Limited reduction in funding* means a reduction in funding of less than five percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction in funding will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(d) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(e) (1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614; or

(v) A limited reduction of funding as defined in this section.

(f) *Substantial noncompliance* means either a substantial violation, as defined in this section, or a substantial failure, as defined in this part at § 1606.3(a).

(g) *Violation* means a violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or a Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract.

(h) *Substantial violation* means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

(i) *Corporation*, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual at the level of an office director, deputy director, or higher.

(j) *Receipt* of materials shall mean that the materials were sent to the normal address for physical mail, e-mail, or fax transmission, and there is reliable secondary confirmation of

delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation e-mail or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient is sufficient for the running of applicable time periods. Proof of receipt by the Board Chair is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

(k) *Days* shall mean the number of actual days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of *business days* shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

5. Amend § 1606.3 by revising the heading of that section, revising paragraph (a)(1), adding paragraph (b), renumbering paragraph (b) as (c), and revising paragraph (c) to read as follows:

§ 1606.3 Grounds for a termination or a lesser reduction in funding.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted.

(c) A determination of whether there has been a substantial violation for the purposes of this section, and the magnitude of any termination, in whole or in part, or any lesser reduction in funding, will be based on consideration of the criteria set forth in the definition of "substantial violation" in this part.

6. Amend § 1606.5 to revise the heading of that section, revise the language and redesignate it as paragraph (a), and add a new paragraph (b) to read as follows:

§ 1606.5 Procedures.

(a) Before a final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a lesser reduction in funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the preliminary and/or final determinations so as to meet the criterion set out in § 1606.10(d).

7. Amend § 1606.6 by revising paragraphs (a) and (b) to read as follows:

§ 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated, that a lesser reduction in funding shall be imposed, and/or

that a recipient should be debarred, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body. The notice shall:

- (1) State the grounds for the proposed action;
- (2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;
- (3) Inform the recipient of the proposed amount and effective date for the proposed action;
- (4) Advise the recipient of its procedural rights for review of the proposed action under this part;
- (5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13; and
- (6) Specify what, if any, corrective action the recipient can take to avoid the proposed action.

(b) If the recipient does not request review, as provided for in this part, then the preliminary determination shall become final, at LSC's discretion, after the relevant time limits have expired. The Corporation shall provide the recipient with the final decision, and no further appeal or review will be available under this part.

8. Amend § 1606.7 by revising the heading and paragraphs (a) through (e) and adding paragraph (f) to read as follows:

§ 1606.7 Informal conference, review of written materials, and final determination.

(a) A recipient may submit written materials in opposition to the preliminary determination and/or request an informal conference as follows:

- (i) for terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(ii) for lesser reductions in funding, within 10 business days of receipt of the preliminary determination.

(b) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held, which shall be at the Corporation's discretion. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of LSC.

(c) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination.

(d) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise, and submit written materials.

(e) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. Based on the written materials and/or the informal conference, the Corporation may modify, withdraw, or affirm the preliminary determination through a final determination in writing, which shall be provided to the recipient within 15 calendar days of the conclusion of the informal conference. The final determination shall conform to the requirements of § 1606.6(a).

(f) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, LSC shall notify the recipient that no further appeal or review will be available under this part and may proceed to implement the final determination as a final decision.

9. Amend § 1606.8 by revising the heading and paragraph (a) to read as follows:

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

* * * * *

10. Amend § 1606.9 by revising the heading and paragraph (a) to read as follows:

§ 1606.9 Recommended decision for a terminations or debarment.

(a) For termination or debarment hearings under § 1606.8, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

* * * * *

11. Amend § 1606.10 by revising the heading and paragraphs (a), (b), and (c), adding paragraph (d), and renumbering (d) and (e) to (e) and (f), respectively, and amending (e) and (f) to read as follows:

§ 1606.10 Final decision for a termination, debarment, or lesser reduction.

(a) If neither the Corporation nor the recipient requests review by the President, a final determination or a recommended decision shall become a final decision 10 business days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a final determination or a recommended decision. A request shall be made in writing within 10 business days after receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the written record to the recipient.

(d) For a direct appeal of a final determination pursuant to § 1606.7, in which there is no hearing under § 1606.8, the President may not review the appeal if the President has had prior involvement in the preliminary and/or final determinations. If the President cannot review the appeal, or the President chooses not to do so, then the President shall designate another senior Corporation employee who has not had prior involvement in the preliminary and/or final determinations.

(e) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President or designee may adopt, modify, or reverse the recommended decision or final determination, or direct

further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9, this decision shall conform to the requirements of § 1606.9(b). In the event of modification or reversal of a final determination pursuant to § 1606.7, the decision shall conform to the substantive requirements of § 1606.6(a).

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

12. Amend § 1606.13 by amending paragraphs (a), (b), and (d) to read as follows:

(a) Pending the completion of termination or limited reduction in funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction in funding, the recipient loses all rights to the terminated or reduced funds.

* * * * *

(d) Funds recovered by the Corporation pursuant to a termination or limited reduction in funding shall be used in the same service area from which they were recovered or will be reallocated by the Corporation for basic field purposes at its sole discretion.

PART 1618 – ENFORCEMENT PROCEDURES

13. The authority citation for Part 1618 continues to read as follows:

Authority: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4) (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 29963(b)(4)).

14. Amend § 1618.1 to read as follows:

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

15. Amend § 1618.2 to revise the heading and to read as follows:

§ 1618.2 Definitions.

(a) *LSC requirements* means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

(b) *Violation* means a violation by the recipient of the LSC requirements.

16. Amend § 1618.3 to read as follows:

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

17. Amend § 1618.4 by revising paragraphs (a) and (b), renumbering paragraph (c) to (b), revising new paragraph (b), and adding a new paragraph (c) to read as follows:

§ 1618.4 Duties of Recipients.

(a) A recipient shall:

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

18. Amend s 1618.5 by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, has failed to take appropriate remedial or disciplinary action to ensure compliance by its employees with the LSC requirements, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a lesser reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

Victor M. Fortuno

Vice President & General Counsel

DRAFT

Part 1606

Part 1606 showing draft further revisions for incorporating lesser reductions in funding.

Original NPRM changes are indicated in **red**.

Further NPRM proposed changes are indicated in **blue**.

§ 1606: TERMINATION, LIMITED REDUCTION IN FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, ~~or~~ to debar a recipient from receiving future LSC awards of financial assistance, or to impose a lesser reduction in funding; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(b) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(c) *Limited reduction in funding* means a reduction in funding of less than ~~five~~ percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. ~~§1606.15 of this Part~~. A limited reduction in funding will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(d) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(e) (1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only

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Original NPRM changes are indicated in **red**.

Further NPRM proposed changes are indicated in **blue**.

the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 C.F.R. Part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 C.F.R. Part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 C.F.R. Part 1614; or

(v) A limited reduction of funding as defined in this section paragraph.

~~(v) A reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with regulations promulgated by the Corporation. No such reduction shall be imposed except in accordance with regulations promulgated by the Corporation.~~

(f) Substantial noncompliance means either a substantial violation, as defined in this section, or a substantial failure, as defined in this part at § 1606.3(a).

(g) Violation means a violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or a Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract.

(h) Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

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(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

(i) Corporation, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual at the level of an office director, deputy director, or higher.

(j) Receipt of materials shall mean that the materials were sent to the normal address for physical mail, e-mail, or fax transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation e-mail or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient is sufficient for the running of applicable time periods. Proof of receipt by the Board Chair is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

(k) Days shall mean the number of actual days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of business days shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

§ 1606.3 Grounds for a termination or a lesser reduction in funding.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient ~~of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract,~~ and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted.

(c) A determination of whether there has been a substantial violation for the purposes of ~~paragraph (a)(1) of this section,~~ **and the magnitude of any termination, in whole or in part, or any lesser reduction in funding,** will be based on consideration of the ~~following~~ criteria set forth in the definition of "substantial violation" in this part.

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- ~~(1) The number of restrictions or requirements violated;~~
- ~~(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;~~
- ~~(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;~~
- ~~(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and~~
- ~~(5) Whether the violation was knowing and willful.~~

§ 1606.4 Grounds for debarment.

- (a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.
- (b) As used in paragraph (a) of this section, “good cause” means:
 - (1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;
 - (2) A termination of financial assistance in whole of the most recent grant of financial assistance;
 - (3) The substantial violation by the recipient of the restrictions delineated in § 1610.2 (a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;
 - (4) Knowing entry by the recipient into:
 - (i) A subgrant, subcontract, or other similar agreement with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or
 - (ii) An agreement for professional services with an IPA debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or
 - (5) The filing of a lawsuit by a recipient, provided that the lawsuit:
 - (i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

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(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after the effective date of this rule.

§ 1606.5 ~~Termination and debarment~~ Procedures.

(a) Before any final action is taken under this part ~~recipient's grant or contract may be terminated or a recipient may be debarred~~, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a lesser reduction in funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the preliminary and/or final determinations so as to meet the criterion set out in § 1606.10(d).

§ 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated, that a lesser reduction in funding shall be imposed, and/or that a recipient should be debarred, the Corporation ~~employee who has been designated by the President as the person to bring such actions (hereinafter referred to as the "designated employee")~~ shall issue a written notice to the recipient and the Chair~~person~~ of the recipient's governing body. The notice shall:

(1) State the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed amount and effective date for the proposed action sanctions;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part; ~~to request:~~

~~(i) An informal conference under §1606.7; and~~

~~(ii) a hearing under §1606.8; and~~

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Further NPRM proposed changes are indicated in **blue**.

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13; and

(6) Specify what, if any, corrective action the recipient can take to avoid the proposed action.

(b) If the recipient does not request ~~an informal conference or a hearing within the time prescribed in §1606.7(a) or §1606.8(a), review, as provided for in this part, then the preliminary determination shall become final, at LSC's discretion, after the relevant time limits have expired.~~ The Corporation shall provide the recipient with the final decision, and no further appeal or review will be available under this part.

§ 1606.7 Informal conference, review of written materials, and final determination.

(a) A recipient may submit written materials in opposition to the preliminary determination and/or a request for an informal conference as follows:

(i) for terminations or debarments, within 30 calendar days of its receipt of the preliminary determination; or the proposed decision.

(ii) for lesser reductions in funding, within 10 business days of receipt of the preliminary determination.

(b) Within 5 business days of receipt of a the request for a conference, the Corporation designated employee shall notify the recipient of the time and place the conference will be held, which shall be at the Corporation's discretion. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of LSC.

(c) ~~The designated employee shall conduct~~ The informal conference shall be conducted by the Corporation employee who issued the preliminary determination.

(d) At the informal conference, the ~~designated employee~~ Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, ~~and~~ explore the possibilities of settlement or compromise, and submit written materials.

(e) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. Based on the written materials and/or the informal conference, the Corporation ~~The designated employee~~ may modify, withdraw, or affirm the preliminary determination through a final determination in writing, a copy of which shall be provided to the

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recipient within ~~10~~15 calendar days of the conclusion of the informal conference. The final determination shall conform to the requirements of § 1606.6(a).

(f) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, LSC shall notify the recipient that no further appeal or review will be available under this part and may proceed to implement the final determination as a final decision.

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, ~~t~~The recipient may make a written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

(b) Within 10 days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

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(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be disbarred.

§ 1606.9 Recommended decision for a terminations or debarment.

(a) For termination or debarment hearings under § 1606.8, wWithin 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

- (1) Terminate financial assistance to the recipient as of a specific date; or
- (2) Continue the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; and/or
- (3) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision for a termination, debarment, or lesser reduction.

(a) If neither the Corporation nor the recipient requests review by the President, a final determination or a recommended decision shall become a final decision ~~10 calendar business~~ days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a final determination or a recommended decision. A request shall be made in writing within 10 business days after

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receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the ~~termination or debarment~~ proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the written record to the recipient.

(d) For a direct appeal of a final determination pursuant to § 1606.7, in which there is no hearing under § 1606.8, the President may not review the appeal if the President has had prior involvement in the preliminary and/or final determinations. If the President cannot review the appeal, or the President chooses not to do so, then the President shall designate another senior Corporation employee who has not had prior involvement in the preliminary and/or final determinations.

(ed) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President or designee may adopt, modify, or reverse the recommended decision or final determination, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9, the President's this decision shall conform to the requirements of § 1606.9(b). In the event of modification or reversal of a final determination pursuant to § 1606.7, the decision shall conform to the substantive requirements of § 1606.6(a).

(fe) The President's decision of the President or designee under this section shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 shall not apply. Instead:

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- (1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.
 - (2) The hearing officer's recommendation shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.
 - (3) If neither party appeals the hearing officer's recommendation within 10 days of receipt of the recommended decision, the decision shall become final.
 - (4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).
- (d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.
- (e) The Corporation may reverse a debarment decision upon request for the following reasons:
- (1) Newly discovered material evidence;
 - (2) Reversal of the conviction or civil judgment upon which the debarment was based;
 - (3) Bona fide change in ownership or management of a recipient;
 - (4) Elimination of other causes for which the debarment was imposed; or
 - (5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

- (a) Except for the 6-year time limit for debarments in § 1606.11(c), any period of time provided in these rules may, upon good cause shown and determined, be extended:
- (1) By the designated employee who issued the preliminary decision until a hearing officer has been appointed;
 - (2) By the hearing officer, until the recommended decision has been issued;
 - (3) By the President at any time.

Part 1606 showing draft further revisions for incorporating lesser reductions in funding.

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(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation.

§ 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination or limited reduction in funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction in funding, the recipient loses all rights to the terminated or reduced funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize termination funding if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) Funds recovered by the Corporation pursuant to a termination or limited reduction in funding shall be ~~used in the same service area from which they were recovered or will be~~ reallocated by the Corporation for basic field purposes at its sole discretion.

§ 1606.14 Recompensation.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11.

All of the provisions of the proposed § 1606.15 in the NPRM would be incorporated in Part 1606 as indicated above. The revised NPRM would have no § 1606.15. It is repeated here for reference only.

Sec. 1606.15 Limited reductions of funding

(a) The Corporation may, in accordance with the procedures and requirements set forth in this section, impose a limited reduction of funding by reducing a recipient's funding in an amount less than 5% of the recipient's current annual level of financial assistance.

(b) Grounds for limited reduction in funding. A limited reduction of funding may be imposed when the Corporation determines that termination in whole or in part of the recipient's grant is not warranted, but that there nevertheless has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation.

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(c) A determination whether there has been a substantial violation for the purposes of paragraph (b) of this section, and the magnitude of the limited reduction in funding, will be based on consideration of the criteria set forth in §1606.3(b).

(d) When the Corporation has made a determination to impose a limited reduction in funding in accordance with this section, the Corporation shall provide a written determination to the recipient and the Chair of the recipient's governing body. The determination shall:

(1) State the grounds, the amount, and the effective date for the limited reduction in funding;

(2) Identify, with reasonable specificity, any facts or documents relied on as justification for the limited reduction in funding;

(3) Specify what, if any, corrective action the recipient can take to avoid the limited reduction in funding;

(4) Advise the recipient that it may request, within five business days of receipt of the determination, an informal meeting with the Corporation at which it may attempt to show that the limited reduction in funding should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the limited reduction in funding.

(e) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within five business days after the recipient's request is received.

(f) If the recipient neither requests an informal meeting nor submits any written materials in opposition to the determination, the determination will be deemed effective at the end of the 10-day period following recipient's receipt of the determination.

(g) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. After considering such materials, the Corporation shall decide within 30 days whether the limited reduction in funding should become effective and shall notify the recipient and the recipient's Board Chair in writing of its decision.

Part 1618

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Original NPRM changes are indicated in **red**.
Further NPRM proposed changes are indicated in **blue**.

Part 1618—Enforcement Procedures

§ 1618.1 Purpose.

In order to ~~ensure~~insure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation~~Act~~, and to prevent a question of whether these requirements have~~the Act has~~ been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with ~~them~~the Act.

§ 1618.2 Definitions.

As used in this part, ~~Act~~ means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

(a) LSC requirements means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

(b) Violation means a violation by the recipient of the LSC requirements.

§ 1618.3 Complaints.

A complaint of a violation ~~of the Act~~ by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

(a) A recipient shall:

(1~~a~~) Advise its employees of their responsibilities under the LSC requirements~~the Act~~;
~~and~~

(2~~b~~) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation ~~violated a prohibition of the Act; and whether the violation merits a sanction based on consideration of the totality of the circumstances;~~ and ~~shall~~

(3~~e~~) ~~e~~Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

Part 1618 showing draft further revisions.

Original NPRM changes are indicated in **red**.

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(i1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii2) Suspension and termination of employment; and

(iii3) Other sanctions appropriate for enforcement of the LSC requirements Act; ~~but~~

(be) Before suspending or terminating the employment of any person for a violation violating a prohibition of the Act, a recipient shall consult the Corporation to ensure insure that its interpretation of these requirements Act is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's an employee may have committed a violation violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure ensure compliance by its employees with the LSC requirements Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a lesser reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606; respectively; may impose Special Grant Conditions on the recipient during the grant year; part 1612, or may take other action to enforce compliance with the LSC requirements Act.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

Grant Assurance Memo



MEMORANDUM

TO: Operations & Regulations Committee
FROM: James J. Sandman, President
DATE: July 9, 2012
SUBJECT: Grant Assurances for LSC 2013 Grant Awards

This memorandum provides background on the attached Grant Assurances for LSC's 2013 grant awards. The Grant Assurances underwent significant revisions in 2008 and modifications since then have been few. There are no substantive changes or new Grant Assurances for 2013. Five of the current Grant Assurances have been revised to further clarify the rights and responsibilities of LSC and the grantee and/or to make the Grant Assurances easier to understand and use.

Background:

Grant Assurances are standardized and are required to be executed by each LSC grantee when it applies for and when it accepts a grant from LSC. They include certifications by the grantee and delineate certain responsibilities of the grantee. Grant Assurances 1-6 address applicable legal requirements; Grant Assurances 7-9 address programmatic requirements; Grant Assurances 10-19 address records and information, recordkeeping, and notification requirements; and Grant Assurances 20-21 address the grantee's responsibility to assist in resolving outstanding audit or compliance issues and the use of the LSC Logo.

The Grant Assurances are periodically updated or revised based on LSC's experience and on suggestions received from the Office of Inspector General and third parties. They are reviewed annually by a staff working-group comprised of representatives from the Offices of Compliance and Enforcement, Information Management, Legal Affairs and Program Performance.

One or more representatives from the OIG provided recommendations to the committee throughout the process. As a representative of our grantees, the National Legal Aid and Defender Association also provided input. To help ensure transparency in this process, LSC also published the proposed 2013 Grant Assurances on the "LSC Grants" website on May 11, 2012, for thirty days for public comment. The Federal Register notice regarding the public comment period informed interested parties of the changes proposed for the 2013 Grant Assurances, the location for reviewing the proposed 2013 Grant Assurances, and the options for submitting comments to LSC. We did not receive any comments.

This memorandum includes the following four attachments:

- **Attachment 1** is the LSC “*Statement of Purpose - Grant Assurances*,” which is the guide developed and used by LSC in considering revisions to the Grant Assurances.
- **Attachment 2** discusses the proposed revisions for the 2013 Grant Assurances. There are five Grant Assurances for which there are proposed revisions (i.e., GA#1, #5, #14(b and c), #19(d), and #21).
- **Attachment 3** is a copy of the 2013 Grant Assurances shown with "track changes" from the current Grant Assurances.
- **Attachment 4** is a clean copy of the 2013 Grant Assurances. All of the recommended updates are included in this attachment.

I do not believe that the 2013 Grant Assurances require action by the Committee or full Board. In recent years, however, Grant Assurances have been presented to the Operations & Regulations Committee and approved by the Board, so, consistent with that practice I am submitting them for whatever action the Committee and the Board deem appropriate. I would be happy to answer any questions you may have or provide any additional information you would like.

*Statement of Purpose - LSC Grant Assurances
(Final - January 18, 2007)*

The purpose of the LSC Grant Assurances is to delineate the rights and responsibilities of LSC and the recipient pursuant to the provisions of the grant.¹

As a grant-making agency created by Congress, LSC has Grant Assurances that are intended to reiterate and/or clarify the responsibilities and obligations already applicable through existing law and regulations and/or obligate the recipient to comply with specific additional requirements in order to effectuate the purposes of the LSC Act and other applicable law.

LSC Grant Assurances must serve one or more of the following objectives:

- 1) Ensure or support compliance with applicable law
- 2) Protect the legal and financial interests of LSC as grantor
- 3) Enable LSC to administer its grants effectively and efficiently
- 4) Promote the effective delivery of high quality legal services to eligible clients in an efficient manner
- 5) Prevent disputes and promote the expeditious resolution of any disputes that do occur

In addition, if a potential Grant Assurance serves one or more of the objectives stated above, in order for it to be included, it must meet the following requirements:

- 1) It is reasonably related to the purpose of the grant
- 2) It is appropriate for uniform application to all recipients
- 3) It is not duplicative of another existing Grant Assurance

¹ There are substantive distinctions between Grant Assurances and special grant conditions. Grant assurances apply to all grantees. Special grant conditions are specific in application to an individual grantee.

ATTACHMENT 1 (continued)

Further, a potential Grant Assurance which appears appropriate for inclusion because it fulfills the criteria set forth above should also:

- 4) be drafted in simple and straightforward terms, to the extent possible, and
- 5) the value of its objectives should outweigh any additional burden that the Grant Assurance imposes on grantees (does not apply to reiteration of statutory or regulatory requirements)

If a Grant Assurance reiterates a statutory or regulatory requirement, one or more of the following applies:

- 1) It clarifies the requirement in order to provide additional guidance
- 2) It provides specific notice of the requirement which might not be otherwise readily known to the grantee
- 3) LSC is required by statute or regulation to include the requirement in the Grant Assurances

ATTACHMENT – 2

Summary of the Committee’s recommended changes for the 2013 Grant Assurances
Grant Assurances 1, 5, 14(b and c), 19(d), and 21 are affected. The updates to these Grant Assurances are not substantive. To facilitate your review, the updates are shown using “track changes” (see attachment – 3). Please refer to attachment – 3 while reviewing the information below.)

Grant Assurance #1 *(This Grant Assurance requires grantees to comply with all applicable laws, rules, regulations, policies, and LSC directives and instructions related to the grant. It also notifies grantees that multi-year grants must be renewed each year and that upon renewal, new terms and conditions may apply.)*

The first sentence in Grant Assurance #1 is updated to reference the current LSC CSR Handbook, i.e., the LSC CSR Handbook – 2008 edition *as amended 2011*”

Rationale: The update informs grantees that they are to use the current version of the CSR Handbook, i.e., the “2008 edition *as amended 2011*.”

Grant Assurance #5 *(This Grant Assurance requires grantees to notify the OIG after the replacement/termination of the Independent Public Accountant (IPA) performing the grantee’s audit, notifies grantees that no audit costs may be charged to the LSC grant if the audit is not performed in accordance with the OIG audit guidance, and informs grantees that LSC may impose sanctions for failure to have an audit performed in accordance with the OIG audit guidance.)*

The third sentence of the Grant Assurance is changed to use the word “specified” instead of “required” in referring to sanctions available to LSC if a recipient fails to have an acceptable audit.

Rationale: Using the word “specified” instead of “required” is more accurate, i.e., the two sanctions referenced in the Grant Assurance are available to LSC pursuant to the statute, but LSC is not required to implement them. “Specified” is more accurate.

Grant Assurance #14(b and c) *(This Grant Assurance requires grantees to notify LSC of an office closing or relocation; change of the chairperson of the governing/policy body; change of the chief executive officer; change in the grantee’s charter, articles of incorporation, by-laws, or governing body structure; or change in its main email address or website address.)*

This Grant Assurance is updated to require grantees to provide the name, e-mail address, and phone number of the governing/body chairperson and the executive director when there is a change of the chairperson or a change of chief executive officer.

ATTACHMENT – 2 (continued)

Rationale: Adding this requirement simplifies the reporting requirement because the grantee will provide the name and contact information to LSC in one submission rather than submitting the name and then responding to a separate LSC request for the contact information.

Grant Assurance #19(d) *(This Grant Assurance requires each grantee to provide advance notification to LSC of a proposed merger, consolidation, or change in identity, or status as a legal entity. It also notifies grantees of guidelines for planning the orderly conclusion of its role and responsibility as an LSC grantee.)*

The last sentence of the Grant Assurance is updated to reflect the current link for the new LSC Grants website.

Rationale: This is a routine update to an access link on the new “LSC Grants” website.

Grant Assurance #21 *This Grant Assurance requires each grantee to give recognition and acknowledgement of LSC funding by displaying the LSC logo on the grantee’s website, annual reports, press releases, letterhead and other official documents.*

The last sentence of the Grant Assurance is updated to reflect the current link for the new LSC Grants website.

Rationale: This is a routine update to an access link on the new “LSC Grants” website.



**Proposed LSC Grant Assurances
for Calendar Year 2013 Funding
“with track changes”**

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide (2010 Edition), the CSR Handbook (2008 Edition, as amended 2011), the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions as a condition of receiving the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.
2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. Part 1640, it may be subject to civil, criminal and/or administrative penalties. It represents that it has informed employees and board members of the Federal laws and their consequences both to the recipient and to themselves as individuals as required in 45 C.F.R. § 1640.3.
3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. Part 1630.
4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those ~~required~~ specified by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. Other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.
6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.
7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.
8. With respect to its office technology:
 - (a) it has an information security system that ensures confidentiality and security of its operations, assets, data, and files.
 - (b) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.
 - (c) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores electronic or physical copies of these backups in a safe, offsite location.
 - (d) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

- (e) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three years.
9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of relevant and up-to-date community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility to meet the needs of as many consumers as possible, and 3) the LSC logo is used on at least the homepage of the website (see Grant Assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the "National Subject Matter Index"; and the ability to use the LawHelp interactive HotDocs server.
 10. During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office(GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent possible consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy rights of the Applicant's staff members. For those records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record(s).

11. Notwithstanding any other Grant Assurance, § 1006(b)(3) of the LSC Act, 42 U.S.C. § 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC, including the OIG, and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For those reports or records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.
12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, including the OIG, or its agents. Such cooperation shall include making staff available to LSC, including the OIG, or its agents for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. § 3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.
13. It will not take or threaten to take any disciplinary or other retaliatory action against any person because of any appropriate cooperation with or the appropriate release of information to LSC, including the OIG, or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers that it will not take any disciplinary or other retaliatory action against an employee or volunteer (including board members) for any appropriate cooperation with LSC, including the OIG, or other entity authorized to receive such cooperation.
14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:
 - a. a decision to close and/or relocate any main or staffed branch office;
 - b. change of chairperson of the governing/policy body (including the new chairperson's name, telephone number, and e-mail address);
 - c. change of chief executive officer (including the new chief executive officer's name, telephone number, and e-mail address);
 - d. change in its charter, articles of incorporation, by-laws, or governing body structure; or
 - e. change in its main e-mail address or its website address (URL).

15. It will notify the LSC OIG Hotline (Telephone: 800-678-8868 or 202-295-1670; E-mail hotline@oig.lsc.gov; Fax 202-337-7155) within two (2) business days of the discovery of any information that gives it reason to believe it has been the victim of a loss of \$200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or federal law enforcement officials are contacted by the program about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes, that could lead to a loss of \$200 or more. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the occurrence.
16. It will notify the LSC Office of Compliance and Enforcement (OCE) within twenty (20) calendar days whenever:
 - (a) under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;
 - (b) any of the following events likely to have a substantial impact on its delivery of services occur:
 - (i) a monetary judgment, sanction or penalty has been entered against it;
 - (ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
 - (iii) it experiences a *force majeure* event.
17. It will maintain all records pertaining to the grant during the grant year and for a period of six (6) years after expiration of the grant year. With respect to financial records, it will maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.
18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.

19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:
- a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);
 - b. not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;
 - c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less than five (5) years after the closure of the case to which they pertain;
 - d. to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "~~LSC Recipient Information~~RIN," then locate the instructions under "~~Reference Materials~~Grantee Guidance."
20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC, including the OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a “homepage” for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grants.lsc.gov. Once at the website, click ~~“LSC Recipient Information,”~~ then click ~~“AnnouncementsResources,”~~ then click ~~“Reference Materials”~~ to access the logo.

Name of Executive Director

Name of Governing/Policy Board Chairperson
(or other organization official authorizing this application)

Title

Title

Signature

Signature



**Proposed LSC Grant Assurances
for Calendar Year 2013 Funding**
“clean version without track changes”

If Applicant is successful and receives an LSC grant or contract,

APPLICANT HEREBY ASSURES THAT:

1. It will comply with the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, LSC Audit Guide for Recipients and Auditors, the Accounting Guide (2010 Edition), the CSR Handbook (2008 Edition, as amended 2011), the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, and with any amendments of the foregoing adopted before or during the period of this grant. It will comply with both substantive and procedural requirements, including recordkeeping and reporting requirements. It understands that a successful Applicant may be required to agree to special grant conditions as a condition of receiving the grant. Multi-year grants must be renewed each year. Upon renewal, new terms and conditions may apply.
2. It agrees to be subject to all provisions of Federal law relating to the proper use of Federal funds listed in 45 C.F.R. § 1640.2(a)(1). It understands that if Applicant violates any Federal laws identified in 45 C.F.R. Part 1640, it may be subject to civil, criminal and/or administrative penalties. It represents that it has informed employees and board members of the Federal laws and their consequences both to the recipient and to themselves as individuals as required in 45 C.F.R. § 1640.3.
3. It agrees that all derivative income from these grant funds shall also be subject to the terms and conditions of this grant as authorized by 45 C.F.R. Part 1630.
4. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, sexual orientation, or any other basis prohibited by law against: (1) any person applying for employment or employed by the Applicant; or (2) any person seeking or provided assistance from the Applicant or other program(s) supported in whole or in part by this grant. The governing body has adopted or will adopt in a timely manner Equal Opportunity and Sexual Harassment Policies, each of which must include an effective mechanism for processing complaints.

5. It will notify the LSC Office of Inspector General (OIG) within thirty (30) calendar days after replacement of the Independent Public Accountant (IPA), termination of the IPA, or any other occurrence resulting in a new IPA performing the grantee's annual financial audit. No audit costs may be charged to the LSC grant when the audit required has not been made in accordance with the guidance promulgated by the OIG. It understands that if it fails to have an audit acceptable to the OIG in accordance with the OIG's audit guidance (including the Audit Guide for Recipients and Auditors), LSC may impose sanctions in addition to those specified by statute, which are: (1) withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (2) suspension of the recipient's funding until an acceptable audit is completed. Other possible sanctions that LSC may impose for not having an acceptable audit include special grant conditions and/or corrective actions.
6. It understands that Congress may reduce, rescind or sequester LSC funding or may impose additional requirements or restrictions on the use of LSC funding. An award of a grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress, nor preclude the imposition of additional Congressional requirements on any funds that are so disbursed. Such requirements or reductions as implemented by LSC shall not constitute a termination or suspension of funding.
7. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with LSC, and agrees to provide high quality, economical, and effective legal assistance, as measured by the LSC Performance Criteria, ABA Standards for the Provision of Civil Legal Aid, ABA Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means, and consistent with any applicable code or rules of professional conduct, responsibilities, or ethics.
8. With respect to its office technology:
 - (a) it has an information security system that ensures confidentiality and security of its operations, assets, data, and files.
 - (b) it will conduct program-wide conflicts checking contemporaneously with intake using a case management system with an electronic database, including when intake is conducted outside its offices and contemporaneous access to the case management system is available.
 - (c) it has a plan for backing up case management data, financial data, documents and other critical data. It performs these backups at least weekly and checks their integrity by restoring test files. Further, it stores electronic or physical copies of these backups in a safe, offsite location.
 - (d) it has the capacity to convert paper documents into Portable Document Format (PDF) and the capacity to transmit those documents as electronic files.

- (e) each case handler has a computer at her or his work area that can perform all of the following functions: word processing, access to the case management system, access to time-keeping, access to the Internet, including the ability to download files from the Internet, and e-mail capability with the capacity to send and receive messages and attachments both internally and externally. It understands that the above functions describe the minimum functionality of existing computers only. It further agrees that any new computer, monitor, or printer purchased to perform the above functions will have a capacity to exceed the demands of current operating systems and software so that it can reasonably be expected to perform adequately with few upgrades for at least three years.
9. It will work with other LSC and non-LSC-funded legal services providers in the State to ensure that there is a statewide website that publishes a full range of relevant and up-to-date community legal education/pro se related materials and referral information, at least covering the common topics facing the client communities on the subject matters that are the Applicant's priorities. It will contribute to sustaining said website according to the plan for the development and maintenance of the website adopted by the statewide website Stakeholders Committee of which it will be a member. As a member of the Committee it will work to ensure that: 1) outreach is conducted for members of the client community to inform them of the website and about how to use it, 2) the website is periodically evaluated and updated for ease of use and accessibility to meet the needs of as many consumers as possible, and 3) the LSC logo is used on at least the homepage of the website (see Grant Assurance 21 for further instructions and clarification on terms of usage). If a Technology Initiative Grant (TIG) was awarded to start the website using either the LawHelp or Open Source template, it will maintain the scope of functionality of the template it was using, including the capability of having separate sections on the website for clients, legal services advocates, and pro bono attorneys; adhering to the "National Subject Matter Index"; and the ability to use the LawHelp interactive HotDocs server.
 10. During normal business hours and upon request, it will give any authorized representative of LSC, including the OIG, or the Comptroller General of the United States (which includes the Government Accountability Office(GAO)) access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent possible consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy rights of the Applicant's staff members. For those records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record(s).
 11. Notwithstanding any other Grant Assurance, § 1006(b)(3) of the LSC Act, 42 U.S.C. § 2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer

agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC, including the OIG, and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For those reports or records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.

12. It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, including the OIG, or its agents. Such cooperation shall include making staff available to LSC, including the OIG, or its agents for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. § 3. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.
13. It will not take or threaten to take any disciplinary or other retaliatory action against any person because of any appropriate cooperation with or the appropriate release of information to LSC, including the OIG, or other entity authorized to receive such cooperation or information pursuant to applicable procedures and consistent with any applicable law, code of ethics, or rule of professional responsibility. It will notify its employees and volunteers that it will not take any disciplinary or other retaliatory action against an employee or volunteer (including board members) for any appropriate cooperation with LSC, including the OIG, or other entity authorized to receive such cooperation.
14. It will notify the LSC Office of Information Management within thirty (30) calendar days after any of the following occurrences that involve activities funded by the grant:
 - a. a decision to close and/or relocate any main or staffed branch office;
 - b. change of chairperson of the governing/policy body (including the new chairperson's name, telephone number, and e-mail address);
 - c. change of chief executive officer (including the new chief executive officer's name, telephone number, and e-mail address);
 - d. change in its charter, articles of incorporation, by-laws, or governing body structure; or
 - e. change in its main e-mail address or its website address (URL).
15. It will notify the LSC OIG Hotline (Telephone: 800-678-8868 or 202-295-1670; E-mail hotline@oig.lsc.gov; Fax 202-337-7155) within two (2) business days of the discovery of any information that gives it reason to believe it has been the victim of a

loss of \$200 or more as a result of any crime, fraud, misappropriation, embezzlement, or theft involving property, client funds, LSC funds, as well as non-LSC funds used for the provision of legal assistance; or when local, state, or federal law enforcement officials are contacted by the program about a crime. It also will notify the OIG if it has been the victim of a theft of items such as credit cards, check stock, passwords, or electronic access codes, that could lead to a loss of \$200 or more. The required notice shall be provided regardless of whether the funds or property are recovered. Once it has determined that a reportable event has occurred, it agrees it will contact the OIG before conducting its own investigation into the occurrence.

16. It will notify the LSC Office of Compliance and Enforcement (OCE) within twenty (20) calendar days whenever:
 - (a) under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f), the Applicant receives any notice of a claim for attorneys' fees. The Applicant also will forward, upon receipt, a copy of the pleading requesting these attorneys' fees;
 - (b) any of the following events likely to have a substantial impact on its delivery of services-occur:
 - (i) a monetary judgment, sanction or penalty has been entered against it;
 - (ii) it enters into a voluntary settlement of an action or matter which involves the payment of a monetary judgment, sanction or penalty;
 - (iii) it experiences a *force majeure* event.
17. It will maintain all records pertaining to the grant during the grant year and for a period of six (6) years after expiration of the grant year. With respect to financial records, it will maintain originals of all financial records and supporting documentation sufficient for LSC to audit and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. LSC retains the right to perform an audit, or engage independent auditors to do so, whether during or subsequent to the grant period.
18. It will, in accordance with internal policies, retain and preserve closed client files for a period of not less than five (5) years from the date the file is closed or for the period set by Federal, state, or local rules on maintenance of records, whichever is longer.

19. In the event that the Applicant merges or consolidates with another LSC grantee, changes its current identity or status as a legal entity, or ceases to be a direct recipient of LSC grant funds at the end of the grant term or during the grant term for whatever reason, it agrees:
 - a. to provide the LSC Office of Program Performance (OPP) with written notice at least sixty (60) calendar days prior to any of the above events (except when the LSC grant relationship changes as a result of LSC action);
 - b. not to transfer its interests in its LSC grant to another entity without prior approval from LSC for such transfer, including submission to LSC and approval by LSC of a Successor in Interest Agreement;
 - c. to ensure that any successor entity maintains the Applicant's records, including financial records, for a period of six (6) years after expiration of the grant year to which they pertain and maintains client files for a period of not less than five (5) years after the closure of the case to which they pertain;
 - d. to submit to the LSC OPP, either at the time that it provides the written notice in (a) above, or within fifteen (15) calendar days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the Applicant as a recipient of LSC funds. Detailed instructions for preparing this plan are at www.grants.lsc.gov under the title "Planning the Orderly Conclusion of the Role and Responsibilities of a Recipient of LSC Funds." Once at the website, click "RIN," then locate the instructions under "Grantee Guidance."
20. It agrees to cooperate with LSC in its efforts to follow up on audit findings, recommendations, significant deficiencies or material weaknesses, and corrective actions by LSC, including the OIG, or the GAO, and/or with the findings, recommendations or significant deficiencies or material weaknesses found by the Applicant's IPA to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. It agrees to expeditiously resolve all such reported audit findings, significant deficiencies or material weaknesses, and corrective actions, including those of sub-recipients, to the satisfaction of LSC.

21. It will use the LSC logo on any Internet website page that may serve as a “homepage” for the Applicant, and on its Annual Report, press releases, and official letterhead, and may use the logo on other official documents such as business cards, newsletters, telephone directory listings or other advertisements or announcements about services provided by the Applicant and supported with LSC funds. It understands that the LSC logo is a registered service mark of LSC and that permission to use the logo is provided to Applicant under a limited license such that the logo may be used: (1) only while Applicant is receiving LSC funds; (2) only for the purposes described above; and (3) only in accordance with such size, format and color instructions as LSC provides. Other uses of the logo are not permitted unless expressly authorized in writing by LSC. Electronic and camera-ready versions of the logo are available at www.grants.lsc.gov. Once at the website, click “Resources,” then click “Reference Materials” to access the logo.

Name of Executive Director

Name of Governing/Policy Board Chairperson
(or other organization official authorizing this application)

Title

Title

Signature

Signature

Third Party Contracting

OFFICE OF LEGAL AFFAIRS

To: Operations and Regulations Committee
Through: Victor M. Fortuno, Vice President and General Counsel
From: Mark Freedman, Senior Assistant General Counsel
Re: Status Report on Third-Party Contracting Revisions
Date: July 13, 2012

Handwritten signatures in black ink, including one that appears to be "VMF" and another that is less legible.

The Office of Inspector General (OIG) reviewed Management's operation of the Technology Initiative Grants (TIG) program in Audit AU-11-01. The OIG recommended that Management initiate rulemaking regarding application of the Part 1627 subgrant and Part 1610 transfer rules to third-party contracting in the TIG program.

Management recommended rulemaking to the Operations and Regulations Committee (Committee) in an April 4, 2012, memorandum, which accompanied an April 4, 2012, rulemaking options paper (ROP). The ROP contained analysis of the relevant language in both the subgrant and transfer rules. (Both documents are included in the July Board Book for reference.) At its meeting on April 16, 2012, the Committee approved Management's recommendation for rulemaking, and the Committee Chair reported it to the Board.

The Board remanded the matter to the Committee to determine if there were any other options for resolving the matter. At the June 18 Committee meeting, Management and the OIG reported that there were no other viable options. The Committee voted to re-recommend rulemaking to the Board, which the Committee Chair will do on July 27. At the June 18 meeting, the Committee also instructed staff to proceed with drafting revisions of the subgrant and transfer rules for the Committee's consideration. The Committee Chair requested a status report for the July 27 Committee meeting.

The Office of Legal Affairs (OLA) has been working on draft revisions. OLA will coordinate this work with the OIG and other LSC offices. Staff are also checking for implications that these changes would have within the framework of all of LSC's rules and regulations. The next scheduled Committee meeting is on October 1, for which materials will be distributed in approximately two months. Subject to the Committee's schedule, staff expects to provide draft language for consideration at that meeting.

Staff are reviewing options involving four primary issues:

- 1) How to best provide clear and consistent application of the transfer and subgrant rules throughout all of LSC's grantmaking activities.
- 2) Whether to provide a separate set of oversight rules for situations in which a contractor handles the primary work of a non-legal assistance LSC grant or contract.
- 3) Whether to extend LSC restrictions to the use of LSC funds by third-party contractors handling the primary work of a non-legal assistance LSC grant or contract.
- 4) How to update the language of these rules to reflect current grantmaking operations.

Staff anticipate that the draft revisions will address the concerns raised by the OIG and provide workable oversight and accountability for LSC recipients and the use of LSC funds.

OFFICE OF LEGAL AFFAIRS

To: Operations and Regulations Committee

Through: Victor M. Fortuno, Vice President and General Counsel 

From: Mark Freedman, Senior Assistant General Counsel 

Re: Non-Rulemaking Options for Third-Party Contracting ROP

Date: June 12, 2012

At the April Board meeting, the Committee recommended that the Board commence rulemaking regarding LSC's subgrant and transfer regulations. That action was based on concerns raised in the Office of Inspector General's (OIG) audit AU-11-01 of the LSC Technology Initiative Grants (TIG) program. Management discussed those issues in the attached April 4, 2012, rulemaking options paper (ROP). Management recommended rulemaking, and the OIG agreed that rulemaking would be one way to address those concerns.

The Board asked the Committee to determine whether there was a non-rulemaking option for resolving those issues. Thereafter, staff from OLA and the OIG met to discuss whether there were any options other than rulemaking for the Board to adopt Management's interpretation of the subgrant and transfer rules. The OIG has drafted two memos to the Committee regarding the applicability of Part 1627, which are in the materials provided for the meeting on June 18. The OIG and Management continue to disagree on the interpretation of the rules.

Management agrees with the OIG that rulemaking is the best way of addressing these issues. The OIG has stated that, were the Board to adopt Management's interpretation of the rules, it cannot preclude the possibility that the OIG could find a violation of the rules in a situation in which the recipient follows the interpretation that Management and the Board have set forth, although in that situation the OIG would refer the issue to Management rather than require action by the recipient. The OIG stated to Management that, "It is the OIG's position that rulemaking would be required to adopt Management's interpretation because (a) the text and regulatory history of the existing rule do not support Management's interpretation, and (b) as written, the rule might not lend itself to easy administration in the context of the TIG program."

Management believes that, for compliance and enforcement purposes, recipients should have a definitive, uniform interpretation of the rules that is followed by both Management and the OIG. There appears to be no option other than rulemaking that would provide that level of certainty. Rulemaking would provide an opportunity to clearly address the situations identified in AU-11-01, and it would also provide an opportunity to otherwise update the rules consistent with current LSC grantmaking, requirements, and restrictions.

To: Operations and Regulations Committee
From: James J. Sandman, President
Re: Management Recommendations on
Rulemaking Options—TIG Third-Party Contracting
Date: April 4, 2012

SUMMARY

The Office of Legal Affairs (OLA) has provided the Committee with a Rulemaking Options Paper (ROP) addressing issues involving third-party contracting by LSC recipients using funds from LSC Technology Initiative Grants (TIGs). Management instructed OLA to provide the ROP as part of Management's response to audit AU-11-01, in which the LSC Office of Inspector General (OIG) reviewed LSC's operation of the TIG program. The ROP explains the two contracting issues raised by the OIG and provides OLA's recommendation regarding the appropriate rulemaking procedures. This memorandum offers Management's recommendation regarding these options.

Recommendation 29 of AU-11-01 states:

The President of LSC should: To the extent that the subgrant rule does not adequately account for the unique features of TIG grants, initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.

This recommendation was based in part on the OIGs' concern that third-party payments made by grant recipients using TIG funds were not subject to sufficient financial oversight. In response, Management has already taken a number of steps to enhance the oversight of third-party payments in the TIG program. Those steps are described below. Management does not believe that rulemaking is necessary to provide tools for improving financial oversight of third-party payments. Management can address this issue adequately using its existing authority under the LSC cost standards rule, 45 C.F.R. Part 1630.

The OIG also concluded that certain business-service contracting under some TIGs constituted Part 1627 subgrants and Part 1610 transfers because the contracting involved the primary purpose of the TIG itself and/or used almost all of the funds granted in the TIG. OLA and Management disagree with the OIG's interpretation of these rules. OLA's interpretation, and LSC's longstanding application of the rules, is that whether a third-party contract for services constitutes a subgrant or a transfer depends on the extent to which the services contracted for are legal services, not on the type of LSC grant that the funds to pay for the services are drawn from. To resolve Management's disagreement with the OIG over the interpretation of the existing rules, Management recommends that the Board commence rulemaking to further clarify the rules consistent with LSC's longstanding interpretation and application of them.

NON-SUBGRANT, THIRD PARTY CONTRACTING

As described in the ROP, the OIG recommended rulemaking to “provide for workable oversight of TIG funds paid to third parties.” Recommendations 5 and 34 in AU-11-01 addressed financial oversight of third-party contracting in TIG grants. In response, LSC Management has adopted new procurement requirements for TIGs involving expenditures of over \$3,500 for service contracts, including competition and documentation requirements. These changes have been added to the TIG Procedures Manual and to the draft 2012 TIG Grant Assurances. The OIG has determined that these actions are sufficient to close these two recommendations.

The new TIG contracting requirements have been adopted under LSC’s authority to implement the cost-standards requirements of 45 C.F.R. Part 1630, which require LSC recipients to follow cost standards for all expenditures of LSC funds, including contracting. Part 1630 does not set out specific third-party contracting requirements, but generally provides that all expenditures must be reasonable and necessary for carrying out LSC grant(s) consistent with ordinary business practices. 45 C.F.R. § 1630.3(b). All expenditures of LSC funds, regardless of the amount, must be documented for Part 1630 purposes and meet the Part 1630 requirements regarding reasonable costs following “generally accepted sound business practices, Federal and State laws and regulations, and the terms and conditions of the grant or contract” 45 C.F.R. § 1630.3(b)(2). When an LSC grantee provides LSC funds to a third party, it must follow the Part 1630 requirements. LSC Management has discretion under the regulation to determine whether the expense is sufficiently documented and justified.

The 2012 TIGs will be awarded toward the end of this year. Through the next year, LSC will be able to evaluate how well the new TIG contracting requirements operate. Many, if not all, LSC recipients have their own contracting procedures, and many are already subject to federal contracting requirements for grants from agencies such as the Department of Justice (under Violence Against Women Act grants). If the current TIG contracting requirements prove ineffective or unworkable, then Management can revise them. Management believes that incorporating special TIG contracting requirements into the regulations is unnecessary and would reduce this important discretion.

PRIMARY-PURPOSE, OR PASS-THROUGH, THIRD-PARTY CONTRACTING

As described in the ROP, the OIG disagrees with OLA and Management regarding the application of the subgrant and transfer rules to TIGs that are primarily for business or technology services. In some of these TIGs, one contractor handles almost all of the work, and in others a contractor manages the work. These are activities that would not constitute subgrants or transfers if they were funded out of a basic field grant or a larger, more general purpose, TIG. The ROP explains OLA’s legal analysis. AU-11-01 specifically notes that the OIG believes the rule as written does not necessary fit well with the operation of the TIG program. The OIG’s primary concern appears to be ensuring that all third-party contracts are categorized properly and that there is sufficient financial oversight for all of them, regardless of categorization.

Management believes that TIG grant recipients should have the benefit of uniform guidance from LSC on the application of the subgrant and transfer rules. Disagreements between OIG and Management on the interpretation of LSC's regulations are not helpful to the field. Management therefore recommends that the Board initiate a notice and comment rulemaking process to amend Parts 1610 and 1627. Management believes the amendments should clearly reflect LSC's longstanding reading of these rules – that is, that both rules are designed to address legal services activities. Both rules explicitly state that they do not cover non-programmatic activities and provide examples, including payments to vendors of goods or services made in the normal course of business. The preapproval and auditing requirements for subgrants reflect a desire by LSC to maintain the kind of control and accountability that it has for primary grants. When LSC adopted the transfer rule, it based the transfer definition on the subgrant definition. The transfer rule subjects the transferee to all of LSC's substantive restrictions on legal services activities, including the 1996 restrictions that reach the use of non-LSC funds. These restrictions involve *legal services* activities (such as class actions, representation of aliens, and lobbying) and *legal aid program operations* (such as program priorities and timekeeping for cases and matters). As with the subgrant rule, the transfer rule does not extend those restrictions to non-programmatic procurement of goods or services. Management does not believe it would be prudent grant management to extend these types of restrictions and requirements to third-party vendors that provide business services and technology services as part of TIGs. These LSC restrictions are meant to apply to entities that receive LSC funds for the provision of legal services under the LSC Act.

Management also recommends this option because of its fitness in other LSC grantmaking contexts. Currently LSC provides emergency and special needs grants that are often for specific non-programmatic expenses. For example, LSC makes some emergency grants for the replacement of offices, equipment, and infrastructure damaged or destroyed in natural disasters. A recipient might pay out all of an emergency grant to one or more third-party contractors for goods or services that are unrelated to the provision of legal services. Under the OIG's analysis, those third parties would become Part 1627 subgrantees and Part 1610 transferees, and they would be subject to LSC's restrictions. Under OLA's analysis, those third-party contracts would be analyzed in the same manner as if they had been paid for out of a basic field grant. Management believes that these types of grants would be unnecessarily hampered by application of the subgrant and transfer rules and that those rules were not intended to reach these situations. It is unlikely that the vendors involved would agree to the subgrant and transfer restrictions, especially as to their non-LSC funds.

Under the current approach, LSC treats all third-party contracts consistently under the rules, regardless of what type of grant the LSC funds come from. This provides important clarity for recipient compliance and LSC oversight. Management does not recommend an oversight system in which the same activities would be a subgrant and a transfer under some types of grants but not under others.

CONCLUSION

Management believes that the underlying concerns for Recommendation 29 in AU-11-01 are best addressed through the combination of Management's new TIG requirements for third-party contracting and revision of the rules to reflect LSC's longstanding application of them. This approach would maintain Management's flexibility regarding oversight of TIG funds paid to third parties. It would also resolve the disagreement regarding the scope of both rules.



OFFICE OF LEGAL AFFAIRS

RULEMAKING OPTIONS PAPER
TIG THIRD-PARTY CONTRACTING

To: Operations and Regulations Committee

Through: Victor M. Fortuno, Vice President and General Counsel 

From: Mark Freedman, Senior Assistant General Counsel 

Re: Rulemaking Options—TIG Third-Party Contracting

Date: April 4, 2012

SCOPE OF RULEMAKING OPTIONS

This Rulemaking Options Paper (ROP) addresses issues involving third-party contracting by LSC recipients using LSC funds from LSC Technology Initiative Grants (TIGs). In audit AU-11-01, the LSC Office of Inspector General (OIG) reviewed LSC’s operation of the TIG program. The OIG recommended that LSC Management commence rulemaking to address financial accountability for third-party contracting in the TIG program that is not covered by the subgrant rule. Management directed OLA to provide this ROP to address those issues. As required by the LSC Rulemaking Protocol, this ROP includes a recommendation regarding the rulemaking processes for each option. OLA does not make any recommendation regarding the substantive choices before the Board. Management is providing its recommendations separately.

EXECUTIVE SUMMARY

All LSC-recipient expenditures of LSC funds are subject to LSC’s financial requirements under LSC’s cost standards rule (45 C.F.R. Part 1630), the LSC Accounting Guide, the LSC Audit Guide, and the LSC Property Acquisition and Management Manual (PAMM) (for covered property transactions). The LSC subgrant regulation, 45 C.F.R. Part 1627, provides for additional prior approval and oversight requirements when an LSC recipient subgrants LSC funds to another entity for programmatic purposes. Most, and perhaps all, subgrants are also transfers under 45 C.F.R. Part 1610, which applies most LSC restrictions to all of the operations of the subgrantee, including the use of non-LSC funds (except for private attorney involvement (PAI) transfers, which do not restrict non-LSC funds). The subgrant regulation does not apply to every third-party contract. Non-subgrant contracts usually involve the procurement of goods or services such as supplies, equipment, and business services.

AU-11-01 contains recommendations that Management ensure that TIG recipients follow proper contracting procedures for third-party contracts using TIG funds. In response, Management has implemented new TIG policies and grant assurances, which the OIG has determined are sufficient to close those recommendations.

Some TIGs have as their core purpose technical or business activities that require non-legal services expertise. Third-party contractors often provide that expertise. Contracts for these types of activities would normally not be considered subgrants or transfers when paid for out of LSC’s basic field grants. In AU-11-01, the OIG treated this type of third-party contracting as subgrants and transfers when funded out of TIGs provided specifically for those purposes. LSC normally looks to the nature of the third-party goods or services contracted for, not the source of LSC funds, to determine if the transaction is a subgrant or transfer. Thus, under longstanding LSC practice and OLA’s legal analysis, LSC does not treat these types of contracts as subgrants or transfers. This interpretation is based on the language of both the subgrant and the transfer rules, which for these purposes are functionally identical.

The subgrant rule defines subgrants as payments of LSC funds to third parties “to conduct certain activities specified by or supported by the recipient [providing the funds] *related to the recipient’s programmatic activities.*” 45 C.F.R. § 1627.2(b)(1) (subrecipient definition) (emphasis added) and similar language at 45 C.F.R. § 1610.2(g) (transfer definition). The rule then explains that:

Such activities would normally include those that might otherwise be expected to be *conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient’s legal assistance activities or such activities as client involvement, training[,] or state support activities.*

Id. (emphasis added). The subgrant rule distinguishes programmatic subgrant activities (such as representation of eligible clients) from non-subgrant contracts outside of the definition. The rule states that “subrecipient activities would normally also *not include* the provision of goods or services by vendors or consultants in the normal course of business” *Id.* (emphasis added). Neither rule involves consideration of the purpose of the primary LSC grant or grants that is the source of the LSC funds. This interpretation enables LSC to apply the rules consistently across all types of LSC grants.

In AU-11-01, the OIG applied a different interpretation of the definitions of Part 1627 subgrants and Part 1610 transfers. The OIG determined that third-party contracts were subgrants and transfers if the contractor performed the core activity of the TIG, even if that activity would be a non-subgrant procurement if funded through other LSC grants (including other TIGs). The OIG’s interpretation applies to TIGs in which virtually all of the funds are paid to a third-party contractor and ones in which a third-party contractor has the primary responsibility for managing the core work of the TIG. Furthermore, “[t]he OIG noted in its review that the programmatic purposes of some TIG grants appeared to overlap the sort of business services that might not be treated as subgrants in other contexts.” AU-11-01 at 44. Thus, under the OIG’s interpretation, a third-party contract in these circumstances is a subgrant out of a specific-purpose TIG even if it would not be a subgrant of a basic field grant or a larger TIG with a more general purpose. The OIG attributed this result to “a degree of ambiguity in the application of LSC’s subgrant rule to grants with relatively narrow, technological programmatic purposes, as was the case with some TIG grants.” *Id.* The OIG acknowledged that “Part 1627 draws a distinction between payments to third parties to carry out activities ‘related to the [grantee’s] programmatic activities,’ which must be treated as subgrants, and services provided by ‘vendors or consultants in the normal

course of business,’ which need not be treated as subgrants when the services ‘would not be expected to be provided directly by the [grantee] itself.’” *Id.* The OIG observed:

The subgrant rule appears to have been written with the LSC’s principal legal service grants in mind, such that ordinarily, programmatic activities consist of the provision of legal services, and business services can easily be classified as ancillary. This division is not as easy to make in the case of TIG grants, and the rule does not seem to have anticipated this problem.

Id. Based on that analysis, and other concerns regarding oversight of third-party contracting, the OIG recommended that Management initiate rulemaking. In Recommendation 29 of AU-11-01 the OIG states that:

The President of LSC should: To the extent that the subgrant rule does not adequately account for the unique features of TIG grants, initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.

Management has instructed OLA to provide this ROP to address the two issues identified by this recommendation: 1) amending the LSC regulation to “provide for workable oversight of TIG funds paid to third parties,” and 2) amending the LSC regulations to account for the “unique features of TIG grants.” For each of these issues, there are three primary rulemaking options for consideration by the Board.

The three rulemaking options regarding financial oversight of TIG funds paid to third parties are: (1) the Board could make no changes to the regulations and defer to Management’s inherent authority to interpret and apply the regulations to these TIG situations; (2) the Board could adopt new provisions in Part 1630 to specifically address third-party contracting in TIGs; (3) the Board could adopt a new regulation separate from Part 1630 to address third-party contracting in TIGs.

The three primary options for the Board regarding treatment of TIGs in which a third party handles the core technical activities or business services of the grant are: (1) the Board could make no changes to the subgrant or transfer rules and defer to Management’s inherent authority to interpret and apply the regulations to these TIG situations; (2) the Board could engage in rulemaking to adopt the longstanding LSC interpretation of these rules; (3) the Board could engage in rulemaking to adopt the OIG’s interpretation of these rules. As part of any rulemaking on this issue, the Board could also consider whether the transfer rule should apply differently from the subgrant rule to these types of TIG contracting, including whether the transfer rule should apply only to the LSC funds transferred, as is the case for PAI transfers.

If the Board decides to engage in rulemaking, then the Board can choose whether to use ordinary Notice and Comment Rulemaking, with or without a Rulemaking Workshop, or Negotiated Rulemaking. OLA recommends that, if the Board chooses to engage in rulemaking, it should use Notice and Comment Rulemaking without the complexity or expense of a Rulemaking Workshop or Negotiated Rulemaking. If the Board wishes to solicit additional input

from outside of LSC regarding these issues and their implications prior to drafting a Notice of Proposed Rulemaking (NPRM), then LSC could issue an Advance Notice of Proposed Rulemaking (ANPRM) identifying the issues and seeking public feedback.

REGULATORY BACKGROUND

Regulatory Framework and Rules on Contracting with LSC Funds

As a grantmaking institution, LSC has the authority and, often, the statutory responsibility to set rules and requirements regarding how LSC funds are spent. For third-party contracting, LSC has the discretion to set rules for how, and under what circumstances, LSC's restrictions and requirements will apply. Part 1630 applies cost standards to all expenditures of LSC funds. The LSC Accounting Guide and the LSC Audit Guide provide further information regarding complying with these standards. The PAMM implements the Part 1630 requirements regarding certain real-property and personal-property transactions. Compliance with these requirements is handled primarily through annual audits by independent public accountants (IPAs) "in accordance with generally accepted government auditing standards and guidance established by the Office of the Inspector General" Pub. L. 104-134, 110 Stat. 1321, 1321-58, § 509(a) (requiring that these audits include review of the recipient's financial statements, internal control systems, and compliance with all Federal laws and regulations) (FY 1996 LSC appropriation riders incorporated by reference in all subsequent years). These audits are reported to the OIG, which refers any actions for follow-up to Management.

Part 1630 requires all LSC recipients to follow cost standards for all expenditures of LSC funds, including contracting. Part 1630 does not set out specific third-party contracting requirements, but generally provides that all expenditures must be reasonable and necessary for carrying out the LSC grant(s) consistent with ordinary business practices. 45 C.F.R. § 1630.3(b). All expenditures of LSC funds, regardless of the amount, must be documented for Part 1630 purposes and meet the Part 1630 requirements regarding reasonable costs following "generally accepted sound business practices, Federal and State laws and regulations, and the terms and conditions of the grant or contract" 45 C.F.R. § 1630.3(b)(2). When an LSC grantee provides LSC funds to a third party, it must follow the Part 1630 requirements. LSC Management has discretion to determine whether the expense is sufficiently documented and justified under Part 1630.

The PAMM applies to purchases of real property and purchases or leases of personal property over \$10,000 with LSC funds. Part 1630 requires LSC approval for such purchases and leases, and the PAMM specifies procedures for acquisition, retention, and disposal of such property. 45 C.F.R. § 1630.5(b). The PAMM was adopted via a process functionally equivalent to Notice and Comment Rulemaking (although the PAMM itself was not codified as a regulation). The PAMM specifically limits itself to property matters and does not apply to LSC-recipient contracting for services.

The TIG program has always included enhanced accountability for major contracting. Unlike the basic field grants, which provide funding in scheduled monthly installments, TIG

funds are provided primarily for progress on the goal and objective of the grant. After an initial payment, subsequent payments are provided as the recipients complete and report upon milestones toward the completion of the grant. The signing of a major contract will be a milestone and, to be paid, the recipient must report with whom it was signed, when it was signed, and provide a copy of the contract. That contract is reviewed by LSC staff to be sure that it complies with the budget and objectives of the grant.

The following recommendations in AU-11-01 also addressed third-party contracting in the TIG program:

Recommendation 5. Establish procedures to ensure that grantees who submit grant applications follow proper contracting processes in selecting vendors to accomplish the tasks required by the grant, including using appropriate competition and maintaining adequate documentation; and have the skills necessary to fully monitor contract performance.

Recommendation 34. To the extent that current or future subgrant requirements do not apply, put in place a process to ensure that the grantees follow an adequate contracting process, including competing high dollar contracts and maintaining adequate documentation for all contracted services.

LSC Management has adopted procurement requirements for TIGs involving expenditures of over \$3,500 for service contracts, including competition and documentation requirements. These changes have been added to the TIG Procedures Manual and to the draft 2012 TIG Grant Assurances. The OIG has determined that these actions are sufficient to close these two recommendations.

Subgrants and Transfers

LSC recipients may provide LSC funds to third parties for activities related to the primary recipient's "programmatic" activities, that is, activities that involve the provision of legal services or information and substantively related activities. In these situations, the third-party contract is a subgrant under Part 1627. Similarly, these contracts are usually transfers under Part 1610. For example, in the past, some recipients have provided subgrants to other legal aid organizations to deliver legal services in specific parts of a service area. Currently, some LSC recipients have subgrants with other entities to handle Private Attorney Involvement (PAI) activities.

The statutory restrictions on LSC recipients extend to the primary recipients of LSC funding, but LSC has the discretion to determine whether, and under what circumstances, they extend to third parties. In the exercise of that discretion, LSC has made the programmatic/non-programmatic distinction in Parts 1610 and 1627 to treat all programmatic transfers/subgrants as subject to all of the LSC restrictions, but not to extend those restrictions to non-programmatic third-party payments, such as acquiring goods or services. This distinction is discussed in more detail below.

Part 1627 subgrants are subject to LSC pre-approval and to financial oversight and auditing requirements. 45 C.F.R. § 1627.3. The primary purpose of these requirements is to ensure that the entity that ultimately delivers the programmatic legal services is subject to the same financial requirements as the primary grantee, and that LSC can veto any inappropriate subgrantee. These financial requirements apply to the LSC funds subgranted to the third party. They do not affect the non-LSC funds of the third party. Part 1627 does not address any substantive restrictions on activities.

Functionally, the subgrant definition is also used for transfers under Part 1610, which provides that a transfer of LSC funds to another entity carries the same LSC restrictions that apply to the primary LSC grantee, including the application of the 1996 restrictions to all of the non-LSC funds of the third-party entity. 45 C.F.R. § 1610.7. This restriction presents the most significant limitation on subgrants/transfers. While the subgrant rule extends only to the LSC funds subgranted, the transfer rule affects all of the activities of the third party. This is significantly different from many other federally-funded programs, in which the program-specific requirements only restrict the use of the funds from the federal grant.

Part 1627, adopted in 1983, defines a “subgrant” as “any transfer of Corporation funds from a recipient [that] qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.” 45 CFR § 1627.2(b)(2) (the definition uses “transfer” as a general term while Part 1610 uses “transfer” as a term-of-art). Paragraph (b)(1) then defines a subrecipient as:

any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient’s programmatic activities.

Such activities would normally include

- those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients,
- or which provide direct support to a recipient’s legal assistance activities
- or such activities as client involvement, training or state support activities.

Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient’s clients on a contract or judicare basis, except that any such arrangement involving more than \$25,000 shall be included.

Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance.

A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

Id. at § 1627.2(b)(1) (formatting and emphasis added).

Part 1610, adopted in 1996, defines a “transfer” using similar terms.

Transfer means a payment of LSC funds by a recipient to a person or entity

- for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients,
- or that provide direct support to the recipient’s legal assistance activities.

Transfer does not include any payment of LSC funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.

45 CFR § 1610.2(g) (formatting and emphasis added). Section 1610.7(a) applies most of the LSC substantive restrictions, including those on non-LSC funds, to the transferee. These restrictions involve legal services activities (such as class actions, representation of aliens, and lobbying) and legal aid program operations (such as program priorities and timekeeping for cases and matters).

If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in this part, except as modified by paragraphs (b) and (c) of this section, will apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred.

Section 1610.7(c) provides a limitation on these restrictions for transfers for PAI activities.

For a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

Additionally section 1610.7(b) provides that the transferee can follow the primary recipient’s Part 1620 priorities (rather than adopting its own), and that the Part 1635 timekeeping rules apply only to the transferred LSC funds.

The Part 1610 transfer definition was based on the Part 1627 subgrant definition, and for purposes of this ROP they are functionally identical. In AU-11-01, the OIG also appears to have treated them as functionally identical for the TIGs reviewed. The OIG stated that “[m]ost, if not all, subgrants also qualify as transfers under Part 1610 subjecting the recipients of these payments to the restrictions outlined therein.” AU-11-01 at 42 (footnote omitted).

The subgrant definition of activities “related to the [primary] recipient’s programmatic activities” under Part 1627 appears to have the same meaning as “conducting programmatic activities that are normally conducted by the [primary] recipient . . . or . . . direct support to the recipient’s legal assistance activities” under Part 1610. Presumably those programmatic activities of the primary recipient involve “legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance,” which are the types of activities that the LSC Act authorizes LSC to support. 42 U.S.C. §2996b(a) (§ 1003(a)—establishment and purpose provision). Thus, the provision of lawyers to represent eligible clients is a programmatic purpose, while the provision of parking spaces for those clients is not.

Generally, all third-party contracts are either subgrants or non-subgrant procurements. Ordinarily, the distinction is easy to make based on the ultimate beneficiary of the services. Subgrants are generally for programmatic activities that directly benefit clients, such as providing legal services. Procurements generally fund activities that directly benefit the grantee itself, such as purchasing and maintaining an office computer network. LSC has traditionally applied these rules on a case-by-case basis to determine if the third-party contracting constitutes a subgrant and transfer.

AU-11-01 Recommendation 29 and Rulemaking Options

Recommendation 29 of AU-11-01 states:

The President of LSC should: To the extent that the subgrant rule does not adequately account for the unique features of TIG grants, initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.

This recommendation involves two issues raised by AU-11-01. First, the OIG expressed concern about workable oversight requirements for third-party payments that are not subgrants. Second, the OIG concluded that certain business-service contracting in some TIGs constituted subgrants, because the contracting involved the primary purpose of the TIG itself and/or used almost all of the funds granted in the TIG. The discussion below addresses each of these two recommendations separately.

If the Board engages in any rulemaking regarding the Part 1627 subgrant definition, then the Board may also want to consider rulemaking regarding the Part 1610 transfer definition. The financial accountability concerns in Part 1627 are different than restrictions issues covered by Part 1610. The rules currently use similar language, and so changes to one rule would merit consideration of changes to conform or distinguish the application of the other rule. In particular, the Part 1610 transfer provisions are more closely associated with legal services activities than the Part 1627 subgrant provisions. If the Board determines that the Part 1627 subgrant provisions should apply to non-legal services based contracting, then it may be appropriate to consider not applying the Part 1610 transfer provisions, or applying them to the LSC-funds transferred but not the non-LSC funds of the transferee (which is how the Part 1610 transfer rule treats transfers that are solely for private attorney involvement (PAI) purposes).

A. Oversight of Non-Subgrant, Third-Party Contracting

1. *Non-Subgrant, Third-Party Contracting Oversight Issues*

All expenditures of LSC funds, regardless of the amount, must be documented for Part 1630 purposes and meet the Part 1630 requirements regarding reasonable costs following “generally accepted sound business practices, Federal and State laws and regulations, and the terms and conditions of the grant or contract” 45 C.F.R. § 1630.3(b)(2). LSC has its own procurement requirements, as do many LSC grantees, but, as of the issuance of AU-11-01, LSC did not require grantees to follow any specific contracting requirements for procurements of services (as opposed to goods). Since, and as a result of, the OIG’s recommendations 5 and 34 in AU-11-01, Management has adopted procurement requirements for TIGs involving expenditures of over \$3,500 for service contracts, including competition and documentation requirements. The OIG has determined that these actions are sufficient to close those two recommendations.

2. *Rulemaking Options for Oversight of Non-Subgrant, Third-Party Contracting*

The Board has three primary options regarding rulemaking on this issue. First, the Board could take no action and leave the issue to Management’s discretion as part of the implementation of the requirements of Part 1630. LSC Management has amended the TIG Procedures Manual and will be implementing new TIG contracting requirements via grant assurance during the next TIG cycle, and all new TIGs will be subject to these requirements. This provides Management with the flexibility to adjust the requirements based on experience and tailor them over time to meet LSC’s oversight needs and the operation of the TIG program.

The second option is to engage in rulemaking to *modify* existing LSC regulations, most likely Part 1630, to add specific TIG contracting requirements. This would provide a more public process for the development of these requirements. Once adopted, the requirements would remain constant, absent a new rulemaking to amend them. The Part 1630 cost standards rule sets out the core requirements and framework that underlie the LSC accounting and audit guides, the LSC PAMM, and LSC recipients’ financial management practices.

The third option is to adopt a *new* separate rule specifically for contracting in the TIG program. As with the second option, this would involve a public process and the promulgation of rules that would remain constant until the next rulemaking. A TIG-specific rule might be appropriate if the Board determined that the types of contracting in TIGs merited fairly extensive treatment. In that case, intertwining the TIG-contracting rules and definitions in the general Part 1630 cost standards rule might become too difficult. A TIG specific rule could have its own procedures for questioned and disallowed costs, or it could state that the Part 1630 procedures would apply to TIG contracting situations.

B. Primary-Purpose or Pass-Through, Third-Party Contracting

1. *Primary-Purpose or Pass-Through, Third-Party Contracting Issues*

In AU-11-01, the OIG identified TIGs that it determined contained contracting that should have been subgrants. These TIGs generally involved technical work such as developing hardware and/or software systems, technical support, or related technical activities. In the TIGs identified by the OIG, a contractor handled most or all of the work under the TIG, and/or a contractor had the primary management responsibility for the work under the TIG. For example, one TIG was for providing free trainings and technical support to LSC grantees on how to use various technologies in developing, maintaining, and/or publishing materials on legal issues. Almost the entire TIG was paid to a third-party, non-profit entity that provided this kind of help-desk and training service specifically for legal aid programs. The third-party did not provide any substantive legal work or legal expertise. In some of the other TIGs, the third-party contractor was responsible for managing the technical project to coordinate between various vendors and grantees. The OIG determined that all of these contracting activities should be subgrants and transfers because the contractor was responsible for the primary purpose of the TIG, regardless of the nature of the contractor's work.

The OIG discussed this concern as follows:

The OIG noted in its review that the programmatic purposes of some TIG grants appeared to overlap the sort of business services that might not be treated as subgrants in other contexts. There is a degree of ambiguity in the application of LSC's subgrant rule to grants with relatively narrow, technological programmatic purposes, as was the case with some TIG grants. Part 1627 draws a distinction between payments to third parties to carry out activities "related to the [grantee's] programmatic activities," which must be treated as subgrants, and services provided by "vendors or consultants in the normal course of business," which need not be treated as subgrants when the services "would not be expected to be provided directly by the [grantee] itself." The subgrant rule appears to have been written with the LSC's principal legal service grants in mind, such that ordinarily, programmatic activities consist of the provision of legal services, and business services can easily be classified as ancillary. This division is not as easy to make in the case of TIG grants, and the rule does not seem to have anticipated this problem.

AU-11-01 at 44. In making its determination, the OIG applied the following analysis:

The TIG grants specify programmatic purposes other than the direct provision of legal services, namely the implementation of certain technological improvements. Payments by TIG grantees to third parties for services that fall within these purposes amount to subgrants within the meaning of LSC's regulations as currently written and should be administered consistent with the requirements of Part 1627.

Id. at 42. Thus, the OIG concluded that third-party contracts for technological activities were subgrants when those activities were the primary purpose of the TIG itself. In some cases, a third-party contractor handled all of the work, and in others a third-party contractor managed the project. This application of the rule would mean that a third-party contract for a technical activity, such as writing computer software, might be a subgrant if paid for from a TIG for that specific work, but might not be a subgrant if paid for out of a larger, more general purpose TIG, or out of a basic field grant.

OLA reviewed the OIG's analysis of the subgrant rule and the similar provisions of the transfer rule and disagreed with the OIG's conclusions. The subgrant rule emphasizes the nature of the third-party activity funded in relation to the programmatic purposes of the primary recipient. It makes no mention of the purpose of the LSC grant that is the source of the LSC funds. The language and examples in the rule focus on what the third-party contractor will do with the LSC funds. The rule specifically refers to LSC "recipients" providing funds for third-party activities "related to the recipient's programmatic activities." It then defines programmatic activities as those that the LSC recipient itself would normally do, such as "representation of eligible clients" or "direct support to a recipient's legal assistance activities" 45 C.F.R. § 1627.2(b)(1). Similarly the transfer rule applies to payments for "conducting programmatic activities that are normally conducted by the recipient itself, such as *representation of eligible clients*, or that provide direct support to the recipient's *legal assistance activities*." 45 C.F.R. § 1610.2(g) (emphasis added). The subgrant rule then explicitly excludes "the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance." 45 C.F.R. § 1627.2(b)(1). The transfer rule repeats this limitation on the scope of the definition more concisely at 45 C.F.R. § 1610.2(g).

LSC recipients' programmatic activities involve the delivery of legal services. Technology development is not one of their "programmatic activities." The provision of a TIG, or any other special grant, for a non-legal services activity does not convert that activity into one of the programmatic activities of the primary recipient. The subgrant rule was not designed as catch-all contracting rule. General procurement requirements might be better suited for financial accountability for non-programmatic third-party contracting.

Furthermore, the subgrant rule and the transfer rule were designed to provide accountability requirements when an LSC recipient provides LSC funds to a third party for programmatic legal services activities. Both rules explicitly exclude non-programmatic goods and services. The transfer rule involves restrictions on legal services activities (such as lobbying, class actions, and representation of aliens) that are unrelated to non-programmatic third-party activities. These provisions generally apply to the transferee's LSC and non-LSC funds. There is no indication or discussion in Part 1610 or the regulatory history that LSC intended to apply these legal services restrictions and requirements on contracts for non-legal aid services or on non-legal aid entities such as technology or business vendors. Rather, Part 1610 repeats the Part 1627 distinction between programmatic and non-programmatic activities based on the legal services activities of the primary LSC recipient. The OIG's interpretation would apply Part 1610 to situations well beyond the scope of the rule's restrictions, and it would disregard the

distinction set out in both rules. Application of the transfer rule to these types of TIG contracting could involve requiring companies providing business or computer services to agree to these legal services restrictions on all of their LSC and non-LSC activities (including work for other clients and their use of company profits). That application of the transfer rule to non-legal entities is inconsistent with the overall purpose and structure of the rule.

Similarly, LSC also provides emergency and special needs grants that are often for specific non-programmatic expenses. For example, some emergency grants are for the replacement of offices, equipment, and infrastructure damaged or destroyed in natural disasters. Thus, an emergency grant might entirely be paid out to one or more third-party contractors for goods or services that would not normally constitute subgrants. Under the OIG's analysis those third parties would become Part 1627 subgrantees, and also Part 1610 transferees. Under OLA's analysis those third-party contracts would be analyzed the same as if they were paid for out of a basic field grant.

2. Rulemaking Options for Primary-Purpose or Pass-Through, Third-Party Contracting

The Board has three primary options regarding rulemaking on this issue. First, the Board could take no action and leave the issue to Management's discretion to interpret and apply the Part 1627 subgrant definition and the Part 1610 transfer definition. Management could continue to apply the current interpretation of the rules, and Management could consider if additional guidance, such as a program letter, might be appropriate to address these types of situations. Management could also consider if the applications of the separate definitions in the two rules might be different in some specific types of contracting situations.

The second option is to engage in rulemaking to clearly state that the definition of a subgrant is based on the *nature of the contracted activity itself*, reflecting OLA's reading of the current rule and LSC's longstanding practice. This option would eliminate the kinds of ambiguities that underlie the disagreement between Management and the OIG regarding the scope of these rules. It would also make clear that third-party contracting will be treated consistently over all types of LSC grants.

The third option is to engage in rulemaking to clearly state that the definition of a subgrant *includes consideration of the primary LSC grant, or grants*, from which funds are used, reflecting the OIG's reading of the current rule. This option would also eliminate ambiguity on this subject. It would provide additional subgrant oversight in situations in which LSC provides a specific TIG for a normally non-programmatic activity and a third-party handles the primary work of the TIG. This option would create situations in which the application of the subgrant rule would depend on which LSC grant the recipient draws the funds from for the third-party contract. Under this option, the Board could also consider a) whether to apply the subgrant rule to these "primary purpose" contracts but not the transfer rule (if it doesn't otherwise apply), or b) whether to limit the application of the transfer rule in these instances to the LSC funds transferred (as is the case for private attorney involvement (PAI) transfers).

RULEMAKING PROCESS

Under the LSC Rulemaking Protocol, LSC may pursue rulemaking by Notice and Comment Rulemaking or through the use of Negotiated Rulemaking (which must be followed by a brief notice and comment process). If LSC pursues a Notice and Comment Rulemaking, then LSC has the option of also conducting a public Regulatory Workshop in connection with the rulemaking to engage in a discussion with interested parties about the subject of the rulemaking prior to the development of a Notice of Proposed Rulemaking for publication and comment.

Although these issues are likely to be of significant interest to the recipient community, Negotiated Rulemakings and Regulatory Workshops are generally best suited to rulemakings on issues relating to the provision of legal services. Any rulemaking conducted on these issues involving third-party contracting would primarily involve questions of LSC grants management and not issues relating to the provision of legal services. As such, neither the resource intensive and prolonged face-to-face dialog with recipients required in a Negotiated Rulemaking, nor the convening of a Regulatory Workshop would seem likely to raise issues or create novel approaches to problem solving that will be of significant assistance to LSC in the drafting of a Notice of Proposed Rulemaking. In our view, the time and expense of a Negotiated Rulemaking or a Regulatory Workshop would not appear to be warranted. Instead, a Notice and Comment rulemaking would provide an appropriate process.

In the Notice and Comment process LSC could begin with an Advance Notice of Proposed Rulemaking (ANPRM) to solicit input on the issues that the Board wants to consider for rulemaking. An ANPRM identifies the issue under review without setting out any specific proposals. This would provide the Board with an opportunity to consider input from the recipient community prior to drafting language to publish for comment in a NPRM.



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TO: Operations & Regulations Committee

FROM: Laurie Tarantowicz 
Assistant Inspector General and Legal Counsel

Matthew C. Glover 
Associate Counsel

DATE: June 11, 2012

SUBJECT: Executive Summary – Limiting the Applicability of Part 1627 to Exempt Certain Grants Falling Outside Section 1006(a)(1)(A) of the LSC Act

While the OIG does not object to a regulatory change that would allow oversight of most third-party payments in the TIG program through adequate contracting procedures rather than subgrant procedures, for the reasons discussed in the attached memorandum, it continues to believe that modification of the subgrant rule through regulatory action is required to achieve that goal. The attached memorandum is provided to explicate the distinction between subrecipients and ordinary vendors in Part 1627 and to explain why interpretive guidance would be an inappropriate mechanism for redrawing the line between these two categories of third-party payees.

Specifically, the OIG is concerned that interpretive guidance is inappropriate in the present case because on their face, the terms of the Part 1627 require a broader reading than that guidance would give them. Interpretive guidance limiting the application of Part 1627 to third-party payments that support the provision of legal services would effectively narrow the

definition of “recipient” found in the rule, 45 C.F.R. § 1627.2(a), and/or shift the focus of 45 C.F.R. § 1627.2(b)(1) from “*the recipient’s* programmatic activities” (emphasis added) to the more general programmatic purpose of LSC as a whole. The OIG believes that the LSC Act requires rulemaking procedures for modifications of this magnitude. 42 U.S.C. § 2996g(e).

In the attached memorandum, the OIG reviews at length the language of Part 1627 and the contemporaneous regulatory history that accompanied the enactment of that Part. It begins by locating the subgrant rule within the context of LSC’s statutory grant-making authority. Section 1006(a) authorizes LSC to make three different types of grants. Some of those grants, Section 1006(a)(1)(A) grants, are to be provided “for the purpose of providing legal assistance to eligible clients ...,” while other grants, Section 1006(a)(3) grants, are provided for activities such as “research ..., ... training and technical assistance, and ... clearinghouse [services].” 42 U.S.C. § 2996e(a). TIG grants most likely fall within Section 1006(a)(3). Unlike the LSC Act itself and Part 1600, Part 1627 expands the definition of “recipient” to include all LSC grantees, whether or not they are engaged in directly providing legal services to eligible clients. That is, Part 1627 expressly includes Section 1006(a)(3) grantees. An interpretation that limits the application of Part 1627 to payments that directly support the provision of legal services would read Section 1006(a)(3) out of the definition of “recipient” in LSC’s subgrant rule.

As discussed in greater detail in the attached memorandum, the interplay of the terms “recipient” and “subrecipient” in Part 1627 dictates a reading of the term “programmatic activity” that is not coterminous with the provision of legal services to eligible clients. Put succinctly, when Part 1627 refers to the programmatic activities of the recipient at issue, it is referring to the grant programs of Section 1006(a)(1)(B) and 1006(a)(3) grantees, as well as Section 1006(a)(1)(A) grantees. It looks to the activities and program of the particular recipient, whether that recipient is a Section 1006(a)(1)(A) grantee or, as in the case of TIG grantees, a

Section 1006(a)(3) grantee. The attached memorandum discusses other specific features of Part 1627 that lend weight to this reading.

In addition, the attached memorandum discusses the contemporaneous regulatory history of Part 1627. LSC's statements concerning Part 1627 in the Federal Register indicate that the term "programmatic activities" was intended to reach more activity than the provision of legal services to eligible clients. Legal Services Corp., 45 C.F.R. Part 1627, Subgrants, Fees and Dues, Final Rule [hereinafter "Final Rule"], 48 Fed. Reg. 54206, 54207 (Nov. 30, 1983). When it published Part 1627, the Corporation expressly noted that the rule reached certain third-party payees who receive LSC funds for purposes other than the direct provision of legal services. It is also telling that the Corporation linked the term "programmatic activities" with the concept of allowable costs in its discussion of the rule, stating: "Aside from the exceptions in the definition, all transfers of funds on a grant or contract basis are intended to be included as transfers related to a recipient's program." *Id.*

Finally, the OIG observes in the attached memorandum that even if it were possible to limit the scope of the term "programmatic activity" in the subgrant rule, such an interpretation would probably not put the third-party payments identified as subgrants in the OIG's TIG Audit beyond the reach of that rule. By statute, all Section 1006(a)(3) grants must be made to support activities related to the provision of legal assistance regardless of their immediate purpose. Consequently, any third-party payees who receive LSC funds to carry out the immediate purpose of a Section 1006(a)(3) grant or to carry out the central activities it was intended to fund must be conducting activities related to the provision of legal assistance. 42 U.S.C. § 2996e(a)(3).

For the reasons discussed above and in the attached memorandum, the OIG believes that should LSC decide to exempt certain third-party payments from its subgrant rule, such an exemption is properly accomplished through a regulatory process that amends text of Part 1627.



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TO: Operations & Regulations Committee

FROM: Laurie Tarantowicz 
Assistant Inspector General and Legal Counsel

Matthew C. Glover 
Associate Counsel

DATE: June 11, 2012

SUBJECT: Limiting the Applicability of LSC's Subgrant Rule, 45 C.F.R. Part 1627, to Exempt Certain Grants Falling Outside Section 1006(a)(1)(A) of the LSC Act

I. Background

In its report entitled, Audit of Legal Services Corporation's Technology Initiative Grant Program (TIG), dated December 8, 2010, AU-11-01 [hereinafter Audit Report], the OIG found that "LSC did not properly apply its subgrant rule when grantees provided TIG funds to third parties" Audit Report at 41. Many of the payments that the OIG identified as problematic "involved pass through grants[] in which substantially all of the grant funds were paid to a third-party entity that performed most or all of the activities called for in the grant documents." *Id.* at 42. In other instances not characterized as pass-through payments, the OIG observed that payments were made to entities that agreed "to carry out the principal ... activities for which the grant was awarded." *Id.* at 42-43. The OIG found that as written, LSC's subgrant rule, 45 C.F.R. Part 1627, required these payments to be treated as subgrants. The Audit Report expressed concern that "the practice of not requiring and approving written subgrant agreements"

as required by the language of the subgrant rule likely had the effect of “weakening LSC’s control and oversight over its grant money.” *Id.* at 43, 44. Importantly, however, the OIG did not find that LSC’s existing subgrant rule established the only possible or best mechanism for overseeing the payments in question and acknowledged that the existing rule may not be properly calibrated for dealing with TIG grants. Accordingly, among other recommendations, the OIG recommended that

[t]o the extent that the subgrant rule does not adequately account for the unique features of TIG grants, [management] initiate a process to amend LSC regulations to account for these features and provide for workable oversight of TIG funds paid to third parties.

Id. at 44 (Recommendation 29).

In response to the OIG’s recommendation, management prepared a rulemaking options paper for the Board of Directors. Rulemaking Options Paper concerning TIG Third-Party Contracting [hereinafter “ROP”], dated April 4, 2012. That ROP “address[ed] two issues ...: 1) amending the LSC regulation to ‘provide for workable oversight of TIG funds paid to third parties,’ and 2) amending the LSC regulations to account for the ‘unique features of TIG grants.’” ROP at 3 (quoting Recommendation 29 in the OIG’s Audit Report). By separate memorandum, management recommended rulemaking to resolve its disagreement with the OIG. Specifically, management recommended rulemaking to expressly incorporate into Part 1627 its “longstanding” practice of distinguishing between subgrants and ordinary contracts by looking to whether “the services contracted for are legal services.” Memorandum regarding Management Recommendations on Rulemaking Options—TIG Third-Party Contracting, dated April 4, 2012, at 1. Under management’s recommendation, most third-party payments in the TIG program would be overseen through contracting procedures that have been reworked since the OIG’s audit.

Management's ROP and recommendation was considered by both the Operations and Regulations Committee and the full Board of Directors. When taken up by the Board of Directors, the question arose as to whether management's recommendation could be implemented by means of interpretive guidance without formal regulatory action.

The OIG remains convinced that LSC's existing subgrant rule looks to the purpose for which a particular grant was awarded, *i.e.*, the program of the particular grant, in order to distinguish between third-party payments that amount to subgrants and ordinary contracts. As a result, the OIG does not believe that interpretive guidance is an appropriate mechanism for addressing the issue identified in the Audit Report. The OIG does not object to a regulatory change that would allow oversight of most third-party payments in the TIG program through adequate contracting procedures rather than subgrant procedures. The OIG continues to believe, however, that modification of the subgrant rule through regulatory action is required to achieve that goal.

II. Analysis

The OIG recognizes that there may be cogent policy considerations for exempting certain third-party payments made by TIG grantees from treatment as subgrants. It is the OIG's understanding that LSC's past practice was largely guided by these policy considerations. The OIG further recognizes that LSC's primary interest in this matter is to ensure adequate oversight of grant funds paid to third parties and that such oversight does not necessarily entail treatment of these payments as subgrants. Even so, for the reasons discussed below, the OIG is convinced that the existing text of Part 1627 cannot be read as reaching only legal service activities of the sort that characterize basic field grant recipients, *i.e.*, the provision of legal services. Because the OIG does not believe that the text of Part 1627 can support the narrow reading implied in LSC's

past practice, it does not believe that interpretive guidance is an appropriate mechanism for legitimating that practice. Accordingly, to the extent that the text of the existing subgrant rule does not adequately address the policy concerns of the Corporation, the OIG would recommend regulatory action.

A. Categories of LSC Grants

In its definition of terms, LSC's existing subgrant rule draws the line between third-party payments that will be treated as subgrants and third-party payments that will be treated as ordinary contracts. In order to develop a clear picture of how those definitions work, it is helpful to recall the statutory schema of grants that LSC is authorized to make. Section 1006 of the Legal Services Corporation Act of 1974 defines the powers of the Corporation. 45 C.F.R. § 2996e. Section 1006(a) addresses LSC's grant-making activities and authorizes LSC to make three different types of grants:

- (1) Section 1006(a)(1)(A) grants are provided "for the purpose of providing legal assistance to eligible clients" These grants have historically been funded through the "basic field programs" line of LSC's appropriation and have always constituted the vast majority of LSC's grants because their recipients are engaged in exactly the sort of activity LSC was created to support, namely, the provision legal services to eligible clients. Section 1006(a)(1)(A) grants comprise general, Native American, and migrant grants.
- (2) Section 1006(a)(1)(B) authorizes additional grants when "necessary to carry out the purposes and provisions of [the LSC Act]," and that purpose is defined in Section 1006b(a) as "providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42

U.S.C. § 2996b(a). This provision appears to be a catch-all intended to provide LSC with the flexibility to make grants that do not fit squarely into the other grant categories should it discover that such additional grants are necessary to the proper functioning of the legal services program it is charged with administering. The OIG cannot identify specific examples of grants falling into this category but, at a minimum, any such grants must be “necessary” to support the provision of legal services to eligible clients.

- (3) Section 1006(a)(3) grants are provided for activities such as “research ..., ... training and technical assistance, and ... clearinghouse [services],” provided that the funded activities are “relat[ed] to the delivery of legal assistance.” As originally contemplated, these grants were not to exceed 10 percent of LSC’s appropriation in any fiscal year. 42 U.S.C. § 2996i(d). LSC’s appropriation has in the past contained specific lines intended to fund the various activities contemplated in Section 1006(a)(3). With the heightened scrutiny of the legal services community in the mid-1990s, however, the lines traditionally intended to fund these activities were removed from LSC’s appropriation. As technical support grants, TIG grants fit most comfortably into this category of LSC grant, and, in the OIG’s understanding, they are the principal example of Section 1006(a)(3) grants currently being made by LSC on a regular basis.

42 U.S.C. 2996e(a). It is beyond dispute that LSC was established principally for the purpose of making Section 1006(a)(1)(A) grants. The very words by which the LSC Act establishes the corporation indicate as much: “There is established ... a private nonmembership corporation ... for the purpose of providing financial support for legal assistance in noncriminal proceedings or

matters to persons financially unable to afford legal assistance.” 42 U.S.C. § 2996b(i). Accordingly, the term “recipient,” as used in the LSC Act itself, is defined as “any grantee, contractee, or recipient of financial assistance described in clause (A) of Section 2996e(a)(1),” *i.e.*, Section 1006(a)(1)(A) grantees.

B. Subgrants and Programmatic Activity

Part 1627 relies on three defined terms to distinguish between subgrants and ordinary contracts for goods and services, namely, recipient, subrecipient, and subgrant. At bottom, a subgrant is a payment of LSC funds by a recipient to a third party (the subrecipient) that has agreed to conduct activities “related to the recipient’s programmatic activities.” Whether a particular payment amounts to a subgrant, therefore, depends largely on the meaning of the term “programmatic activity,” which is not itself defined in the rule. For reasons discussed in its Rulemaking Options Paper, management reads the term to be coextensive with the provision of legal assistance to eligible clients. ROP at 8. The OIG does not believe that the text of Part 1627 supports such a restricted reading. Instead, the OIG believes that the term “programmatic activity” must be read as referring to the purpose for which the particular grant in question was given or, in other words, the principal activities the grant was made to support. Ultimately, the meaning of “programmatic activity” in Part 1627 is controlled by the interplay of the defined terms that work together to delineate those third-party payments that will be treated as subgrants, the relationship between LSC’s subgrant rule and schema of grants established by the LSC Act, and the examples of programmatic activity provided in the rule itself.

As employed in Part 1627, the term “programmatic” appears to require a broad reading. The current text of LSC’s subgrant rule adopts a unique definition of the term “recipient,” opting not to follow either the statutory definition or the contemporaneously-adopted definition

generally applicable throughout LSC's regulations¹. Compare 42 U.S.C. § 2996a(6) and 45 C.F.R. § 1600.1 with 45 C.F.R. 1627.2(a). Part 1627 defines "recipient" to include not only Section 1006(a)(1)(A) grantees, which "furnish[] legal assistance to eligible clients," but also Section 1006(a)(1)(B) and Section 1006(a)(3) grantees. 45 C.F.R. § 1627.2(a). That is, where the LSC Act and Part 1600 limit the term recipient to Section 1006(a)(1)(A), Part 1627 expands the definition to include all LSC grantees, whether they are engaged in directly providing legal services to eligible clients or not.² The inclusion of Section 1006(a)(3) grantees and contractors in the definition of "recipient" for purposes of Part 1627 would be superfluous and, indeed, difficult to explain, if the term "programmatic activities" were read to include only activities programmatic to Section 1006(a)(1)(A) grantees, namely the provision of legal services.

The interplay of the terms "recipient" and "subrecipient" in Part 1627 dictates a reading of the term "programmatic activity" that is not coterminous with the provision of legal services to eligible clients. Part 1627 defines a "subrecipient" as

any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself.

This definition does not tie the distinction between a subrecipient and a vendor to programmatic activities viewed in the abstract. Nor does it look to the congressional purpose for establishing

¹ The definition of recipient found in 45 C.F.R. § 1600.1 appears to have been adopted on May 21, 1984, while Part 1627 was adopted on November 1983. 45 C.F.R. § 1600.1 establishes definitions that apply throughout LSC's regulations "unless otherwise indicated."

² This more expansive definition does not appear to be a historical accident resulting from changes in the contours of LSC's grant making activities. In fact, Part 1627 refers to the statutory definition precisely in order to expand upon it: "Recipient as used in this part means any recipient defined in section 1002(6) of the Act and any grantee or contractor receiving funds under section 1006(a)(1)(B) or 1006(a)(3) of the Act." 45 C.F.R. § 1627.2(b)(1) (emphasis in original).

LSC. *See* ROP at 8. Rather, 45 C.F.R. 1627.2(b)(1) directs the focus of the subrecipient analysis toward “*the recipient’s* programmatic activities” (emphasis added). When Part 1627 refers to the programmatic activities of the recipient at issue, it is referring to the grant programs of Section 1006(a)(1)(B) and 1006(a)(3) grantees, as well as Section 1006(a)(1)(A) grantees. It looks to the activities and program of the recipient at issue, whether that recipient is a Section 1006(a)(1)(A) grantee or, as in the case of TIG grantees, a Section 1006(a)(3) grantee.

Part 1627 clearly contemplates the possibility that some recipients may not receive any LSC funds for purposes of providing legal service to eligible clients at all.³ Such recipients might, for example, provide training or technical assistance. 42 U.S.C. § 2996e(a)(3)(B). Regardless, the rule refers to the programmatic activities of each grant recipient as the main criteria for distinguishing subgrant payments from payment for goods and ordinary business services. Certainly there must be some programmatic activities engaged in by recipients of grants that fall outside of Section 1006(a)(1)(A) and do not call for the provision of legal services to eligible clients. If there were not, there would be little need for the rule to expressly include these Section 1006(a)(3) recipients in its expanded definition of the term recipient. Likewise, if Part 1627 presumed that all Section 1006(a)(3) grantees were also Section 1006(a)(1)(A) grantees and intended programmatic activities to refer to the activities of these grantees as Section 1006(a)(1)(A) grantees, references to Section 1006(a)(3) would do no work. An interpretation of the term “programmatic activities” in the current rule that restricts the meaning of that term to the provision of legal services to eligible clients would effectively rewrite the rule by deleting a portion of the definition of the term “recipient” in 45 C.F.R. § 1627(a). Such an interpretation is barred by “one of the most basic interpretive canons, that a statute should be

³ Grants of this sort may, indeed, have been more common when the subgrant rule was being drafted because the rule predates the congressional decision to defund the clearinghouse and national and state support centers.

construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. U.S.*, 129 S.Ct. 1558, 1566 (2009) (internal quotation marks and citations omitted).⁴

This reading is confirmed by the limited regulatory history related to the interpretation of the term “programmatic activity.” When adopting the final rule in 1983, LSC commented:

The definition of subrecipient is elaborated in the final rule to clarify that it includes organizations receiving funds for state support, training, and client involvement activities. The exception for transfers of funds to private attorneys or law firms on a fee-for-service or *judicare* basis is retained Aside from the exceptions in the definition, all transfers of funds on a grant or contract basis are intended to be included as transfers related to a recipient’s program. Any such transfer not “related” to a recipient’s program would be a disallowed cost anyway, since recipients are not permitted to expend Corporation funds for purposes not related to their programs.

Legal Services Corp., 45 C.F.R. Part 1627, Subgrants, Fees and Dues, Final Rule [hereinafter “Final Rule”], 48 Fed. Reg. 54206, 54207 (Nov. 30, 1983). In this public comment on its subgrant rule, LSC clearly indicated that every recipient, as defined by Part 1627, has a grant program and by implication programmatic activities, regardless of whether the recipient receives Corporate funds for the provision of legal services to eligible clients. In order for a recipient to spend funds in an allowable fashion, its expenditures must be related to its program. *See* 45 C.F.R. 1630.3(a)(2) & (b)(1) (establishing standards for the allowability of costs). It is that

⁴ It may be tempting to read the phrase “the recipient’s programmatic activities” in Part 1627 as the equivalent of the phrase “programmatic activities that are normally conducted by the recipient” in Part 1610 (Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity). Compare 45 C.F.R. 1627.2(b)(1) with 45 C.F.R. 1610.2(g). Such a reading is not, however, viable because the two rules use the term “recipient” in different ways. Unlike Part 1627, which broadens the definition of recipient to include Section 1006(a)(1)(B) and 1006(a)(3) grantees, Part 1610 uses the generally applicable definition of recipient found in Part 1600. When Part 1627 refers to the programmatic activities of recipient it is referring to the grant programs of Section 1006(a)(3) grantees, as well as Section 1006(a)(1)(A) grantees. That is, it looks to the activities and program of the recipient at issue, whether that recipient is a Section 1006(a)(1)(A) grantee or a 1006(a)(3) grantee as in the case of TIG grantees. Part 1610, on the other hand, refers only to the activities normally undertaken by Section 1006(a)(1)(A) grantees in furtherance of their grant programs. As written, there is not a complete overlap between the two rules.

program to which the subgrant refers when it uses the term “programmatic activities.” In other words, 45 C.F.R. § 1627.2(b)(1) always refers to the “recipient’s programmatic activities” not “programmatic activities” in the abstract. The rule looks in every instance to the purpose for which the recipient received the grant in question.

When construing Part 1627 and LSC’s official comment on that Part, it is important to remember that in the context of the subgrant rule, the term “recipient” comprises not only Section 1006(a)(1)(A) grantees but also Section 1006(a)(1)(B) and Section 1006(a)(3) grantees.⁵ As discussed above, Section 1006(a)(3) grantees do not receive funds under that section for purposes of providing legal services to eligible clients. Expenditures by these grantees are still allowable if they are consistent with the programmatic purpose of the grant itself, as the term “program” is used in LSC’s commentary on its rule. Likewise, expenditures outside the programmatic purpose of a Section 1006(a)(3) grant may give rise to a questioned cost, even when the money is spent directly on the provision of legal services to eligible clients. As used in LSC’s commentary on Part 1627, the program of a TIG grant would be the purpose for which the grant was issued.

LSC’s contemporaneous commentary on Part 1627 indicates that for purposes of the subgrant rule all allowable expenditures other than those expressly exempted in the definition of “subrecipient” relate to the recipient’s programmatic purpose.⁶ Final Rule, 48 Fed. Reg. at 54207. It is true that the definition of “subrecipient” contains an exception for “goods and services” provided “in the normal course of business” but, again, this exception is not stated in

⁵ Like Part 1627, Part 1630 (Cost Standards and Procedures), which establishes standards for allowable costs, defines the term recipient to include Section 1006(a)(3) grantees.

⁶ This understanding of programmatic activity goes a long way toward explaining why the drafters of LSC’s subgrant rule saw no need to define the term.

the abstract. It is tied to the activities of the particular recipient. The exception only applies “if [the] goods and services [purchased] would not be expected to be provided directly by the recipient itself.” If the goods or services in question would ordinarily be expected to be provided by the recipient itself, the exception is plainly inapplicable. LSC’s rule focuses the inquiry not on the abstract purpose for which the Legal Services Corporation itself was established, “providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford assistance,” 42 U.S.C. § 2996b(a), but on the program or purpose of the particular grant.⁷ Whatever other activities a grantee might be expected to perform for itself, it would certainly be expected to perform the core activities the grant was made to support.

Several other features of the definition of the term “subrecipient” lend further weight to the conclusion that the term “programmatic activities” as used in 45 C.F.R. Part 1627 reaches more than the provision of legal services to eligible clients. When providing examples of activities sufficiently related to programmatic activities to give rise to a subgrant, 45 C.F.R. § 1627.2(b)(1) lists activities “which provide direct support to a recipient’s legal assistance activities or such activities as client-involvement, training or state support activities.”⁸ 45 C.F.R.

⁷ There appear to be three opinions concerning Part 1627 prepared by the Office of General Counsel (OGC), the predecessor of the Office of Legal Affairs. One of the opinions was for external publication and two were internal opinions. All three addressed the applicability of the rule to payments made out of Section 1006(a)(1)(A) grant funds and are not, therefore, directly on point. The internal opinions are cursory, at best, and the external opinion focuses principally on the interpretation of the Private Attorney Involvement rule. Nevertheless, all three opinions look to the programmatic activities of the particular grantee when assessing whether a payment constitutes a subgrant. Two of the opinions expressly state as much. Internal Opinion, dated February 19, 1985; External Opinion, dated March 8, 1994, at 2; *see also* Internal Opinion, dated August 1, 1984.

⁸ It is the OIG’s understanding that, in the past, state support activities typically involved training, research, brief banks, legal area expertise consulting and co-counseling. LSC support for these activities fell under Section 1006(a)(3), and LSC received funding for them in a line or lines separate from its Section 1006(a)(1)(A) funding line. These grants did not directly support the provision of legal services as do grants made pursuant to Section 1006(a)(1)(A). While not identical with grants to fund state support activities in all respects, TIG grants are similarly situated insofar as they appear to be made pursuant to Section 1006(a)(3) of the LSC Act and they support activities other than the direct provision of legal services to eligible clients.

§ 1627.2(b)(1). The quoted language cannot be read as the functional equivalent of language used in 45 C.F.R. Part 1610 to define a transfer: “[A] payment ... for purpose of conducting programmatic activities that are normally conducted by the recipient . . . or . . . direct support to the recipient’s legal assistance activities.” 45 C.F.R. § 1627.2(g); *cf.* ROP at 7-8.⁹ The plain text of 45 C.F.R. Part 1627 goes beyond direct support for legal assistance activities in its definition of “activities ... related to the recipient’s programmatic activities.” 45 C.F.R. § 1627.2(b)(1). That is, the activities that qualify third-party payees as subrecipients for purposes of a 45 C.F.R. Part 1627 are not defined in terms of legal assistance activities or services provided to eligible clients. At a minimum the rule reaches “client-involvement, training or state support activities,” which it expressly distinguished from activities directly relating to the provision of legal assistance. 45 C.F.R. § 1627.2(b)(1).

It is also noteworthy that 45 C.F.R. § 1627.2(b)(1) speaks of the sort of activities that “would normally” characterize a subrecipient and the sort of activities that “would not normally” characterize a subrecipient. In other words, the examples provided address the usual case but are not exhaustive of the sorts of activities that can give rise to a subgrant. Similarly, the examples of activities that fall outside the scope of the rule describe the usual case but do not foreclose the possibility that the sort of activities listed may from time to time give rise to a subgrant. It is not surprising that all of these examples lean heavily on the model of a subgrant made by a Section 1006(a)(1)(A) recipient since the large majority of LSC’s grants have always fallen into this

⁹ The text of Part 1627 (Subgrants, Fees and Dues) differs from the text of Part 1610 (Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity) in another important respect. Whereas Part 1610 contains an exception for goods and services provided “in the normal course of business,” 45 C.F.R. § 1610.2(g), it omits the conditional limitation on the exception contained in Part 1627, namely, “if such goods or services would not be expected to be provided directly by the recipient itself[] ...,” 45 C.F.R. § 1627.2(b)(1). As with examples of programmatic activity, Part 1610 is similar to Part 1627 but omits nontrivial clauses that appear in the latter. These differences highlight the danger of attempting to use the later adopted Part 1610 as a key to the meaning of Part 1627.

category. The characteristics of subgrant made by a Section 1006(a)(1)(A) recipient would, no doubt, describe the normal case, but the rule does not limit the definition of “subrecipient” to such a case. Even if all the activities listed as examples of provided in 45 C.F.R. § 1627.2(b)(1) entailed “direct support to a recipient’s legal assistance activities,” which they do not, those examples are not intended to capture more unusual subrecipient relationships which nevertheless fall within the rule.¹⁰ The fact that many of the third-party payments in the TIG program satisfy the general definition of subrecipient but do not cleanly fit within the examples of subrecipient activities contained in 45 C.F.R. § 1627.2(b)(1) is entirely consistent with the phrasing of 45 C.F.R. § 1627.2(b)(1) because TIG grants are not the usual or normal grant awarded by LSC.

For the reasons discussed in this subsection, the OIG believes that the term “programmatic activity” as used in Part 1627 must be read broadly and interpreted in light of the purpose of the particular grant at issue. It is difficult to read programmatic activity in Part 1627 as completely synonymous with the provision of legal services to eligible clients.

C. An Appropriate Instance for Rulemaking

While it has been suggested that LSC could adequately address confusion concerning application of its subgrant rule to third-party payments made under the TIG program through interpretive guidance, the OIG is concerned that this approach may be foreclosed by the

¹⁰ For example, 45 C.F.R. § 1627.2(b)(1) provides that activities related to the programmatic purposes of a recipient “would normally not include” goods and services provided in the ordinary course of business. Training is certainly a common service for which business contract on a regular basis. Even so, it would be difficult to maintain that a Section 1006(a)(3) grantee who received a grant to provide training could contract for the provision of the contemplated training without triggering the subgrant rule. In the OIG’s view, a similar result would obtain for analogous third-party payments by TIG grantees. This analysis appears to be confirmed by the decision of the drafters of Part 1627 to expressly include “training or state support activities” in the category of activities “normally included” in the sort of activities undertaken by subrecipients. It should be noted that, in the OIG’s view, the converse is also true: A Section 1006(a)(1)(A) grantee that contracts for training in the use of Microsoft Office products does not thereby establishing a subgrant relationship with the trainer.

requirements of the LSC Act. Specifically, the LSC Act requires that LSC “afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines” and that it “publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.” 42 U.S.C. § 2996g(e). This statutory language certainly does not preclude issuance of interpretive guidance where it is needed to put the grantee community on notice of LSC’s reading of an unclear, ambiguous, or difficult-to-understand regulation. Here, however, interpretative guidance exempting the sort of third-party payments identified in the OIG’s Audit Report from LSC’s subgrant rule appears to be at odds with the language of that rule, which requires a broader reading of the term “programmatic.” Such guidance would effectively narrow the definition of recipient found in the rule, 45 C.F.R. § 1627.2(a), and/or shift the focus of 45 C.F.R. § 1627.2(b)(1) from “*the recipient’s* programmatic activities” (emphasis added) to the more general programmatic purpose of LSC as a whole. Interpretive guidance along these lines would be difficult to distinguish from a *de facto* amendment of the rule.

D. Grants Related to the Provision of Legal Services

Even if it were possible to interpret the term “programmatic activity” in LSC’s subgrant rule as referring exclusively to the provision of legal services to eligible clients, such an interpretation would not, in all likelihood, put the third-party payments identified as subgrants in the OIG’s TIG Audit beyond the reach of LSC’s subgrant rule. A more substantial regulatory change would be required to achieve that outcome.

As discussed above, the subgrant rule defines a “subrecipient” as “any entity that accepts Corporation funds from a recipient ... to conduct certain activities ... *related to* the recipient’s programmatic activities.” 45 C.F.R. § 1627.2(b)(1) (emphasis added). If programmatic

activities were interpreted as referring solely to the provision of legal services, one would still need to determine which activities of third-party payees “relate” to the provision of legal services in order to decide whether a third-party payment made to carry out the central purpose of a TIG grant, or a Section 1006(a)(3) grant more generally, constitutes a subgrant.

Recipients, for purposes of Part 1627 include both Section 1006(a)(1)(A) grantees and Section 1006(a)(3) grantees. Section 1006(a)(1)(A) grants are provided “for the purpose of providing legal assistance to eligible clients” As such, the purpose of such grants and the principal activities they are made to support clearly relate to the provision of legal assistance.¹¹ Unlike Section 1006(a)(1)(A) grants, which are provided “for the purpose of providing legal assistance to eligible clients ...,” Section 1006(a)(3) grants, including TIG grants, are not provided to directly fund the provision of legal services to eligible clients. Rather they fund activities such as “research ..., ... training and technical assistance, and ... clearinghouse [services].” 42 U.S.C. § 2996e(a)(3). The activities supported by Section 1006(a)(3) grants are defined by the LSC Act as “relating to the delivery of legal assistance.” That is, all Section 1006(a)(3) grants must be made to support activities related to the provision of legal assistance regardless of their immediate purpose or the nature of the principal activities they directly fund. Consequently, any third-party payees who receive LSC funds to carry out the immediate purpose of a Section 1006(a)(3) grant or to carry out the central activities it was intended to fund must be conducting activities related to the provision of legal assistance. If LSC were to define or interpret “programmatic activity” as referring to the provision of legal assistance, the activities of

¹¹ A similar analysis applies to Section 1006(a)(1)(B) grantees, which are also recipients within the meaning of Part 1627. Section 1006(a)(1)(B) grants must be “necessary to carry out the purposes and provisions of [the LSC Act].” The purpose of the LSC Act is defined in 42 U.S.C. § 2996b(a) as “providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.” As a matter of logic, one must conclude that the purpose of any Section 1006(a)(1)(B) grant is necessarily related to the provision of legal assistance.

third-party payees that carry out the purposes Section 1006(a)(3) grants, including TIG grants, would still be, by definition, “related to” that programmatic purpose. Such third-party payees would qualify as subrecipients within the meaning of Part 1627.

Given the definition of “recipient” adopted in Part 1627, the authorizing language describing LSC’s grant-making powers in the LSC Act, and the language of relation adopted in 45 C.F.R. § 1627.2(b)(1), a regulatory fix for the problem identified in the TIG Audit Report would have to be more extensive than simply equating “programmatic activity” with the provision of legal services. It appears, therefore, that LSC would have to engage in regulatory action if it chooses to exempt the third-party payments of the sort identified in the Audit Report as “subgrants” from treatment as subgrants under Part 1627.

III. Conclusion

Under LSC’s existing subgrant rule, payments made by TIG grantees to third parties who carry out the purpose of the TIG grant in question are properly characterized as subgrants. The OIG recognizes that it may be desirable to exempt certain third-party payments in the TIG program from treatment as subgrants for administrative reasons. In the OIG’s view, an exemption of this sort would require substantial changes to the existing rule. The LSC Act appears to foreclose recourse to interpretive guidance as a mechanism for accomplishing this sort of substantive regulatory modification. To the extent that LSC decides it is desirable to exempt certain third-party payments in the TIG program from its subgrant rule, such an exemption is properly accomplished through a regulatory process that amends the text of Part 1627.

Board of Directors

BOARD OF DIRECTORS

July 27, 2012

Agenda

OPEN SESSION

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of Minutes of the Board's meeting of May 21, 2012
4. Presentation of the Report of the Pro Bono Task Force
5. Consider and act on the draft Strategic Plan
6. Chairman's Report
7. Members' Reports
8. President's Report
9. Inspector General's Report
10. Consider and act on the report of the Promotion and Provision for the Delivery of Legal Services Committee
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Operations and Regulations Committee
14. Consider and act on the report of the Governance and Performance Review Committee
15. Consider and act on the report of the Institutional Advancement Committee
16. Consider and act on delegation of authority to the LSC Board Chairman to appoint non-directors to serve on LSC Board committees
17. Consider and act on a resolution acknowledging the recent passing of former LSC Board Member Thomas A. Fuentes

18. Public comment
19. Consider and act on other business
20. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

CLOSED SESSION

21. Approval of minutes of the Board's closed session meeting of April 16, 2012
22. Briefing by Management
23. Briefing by the Inspector General
24. Consider and act on General Counsel's report on potential and pending litigation involving LSC
25. Consider and act on motion to adjourn meeting

*Minutes from May 21, 2012
Meeting*

Legal Services Corporation
Meeting of the Board of Directors

Open Session

Monday, May 21, 2012

DRAFT MINUTES

Vice Chair Dean Martha L. Minow convened an *open session* meeting of the Legal Services Corporation's ("LSC") Board of Directors ("the Board") at 1:38 p.m. on Monday, May 21, 2012. The meeting was held at the F. McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street, NW, Washington, DC 20007.

The following Board Members were in attendance:

John G. Levi, Chairman
Martha L. Minow, Vice Chair
Robert J. Grey, Jr.
Charles N.W. Keckler
Harry J.F. Korrell, III
Victor B. Maddox
Laurie Mikva
Julie A. Reiskin
Father Pius Pietrzyk
Gloria Valencia-Weber
James J. Sandman, *ex officio*

Also attending were:

Richard Sloane	Chief of Staff and Special Assistant to the President
Rebecca Fertig	Special Assistant to the President
Kathleen McNamara	Executive Assistant to the President

Victor Fortuno	Vice President for Legal Affairs, General Counsel and Corporate Secretary
Mark Freedman	Senior Assistant General Counsel, Office of Legal Affairs (OLA)
Katherine Ward	Executive Assistant, OLA
Carol Bergman	Director, Office of Government Relations and Public Affairs (GRPA)
Treefa Aziz	Government Affairs Representative, GRPA
Jeffrey Schanz	Inspector General
Laurie Tarantowicz	Assistant Inspector General and Legal Counsel, Office of Inspector General (OIG)
Joel Gallay	Special Counsel to the Inspector General, OIG
Ronald “Dutch” Merryman	Assistant Inspector General for Audit, OIG
David Maddox	Assistant Inspector General for Management and Evaluation, OIG
Chuck Greenfield	National Legal Aid and Defender Association (NLADA)

The following summarizes actions taken by, and presentations made to, the Board:

Dean Minow called the *open session* meeting to order.

MOTION

Father Pius moved to approve the agenda and minutes of the Board’s meeting of April 15 and 16, 2012. Ms. Mikva seconded the motion.

Mr. Maddox received confirmation from Ms. Fertig that the previous transcript was corrected to state he was not in attendance at the April 15th meeting.

VOTE

The motion passed by voice vote of the Board members.

The Board members discussed the latest version of the draft strategic plan. Several comments and edits were offered by the members. Father Pius was asked to incorporate additional revisions and re-circulate a final draft for review before publishing it in the Federal Register for a 30-day public comment period.

MOTION

Professor Valencia-Weber moved to give preliminary approval to the strategic plan as drafted with subsequent minor editing, and publish the final version for a 30-day public comment period. Father Pius seconded the motion.

VOTE

The motion passed by voice vote of the Board Members.

Chairman Levi addressed the passing of former Board member Tom Fuentes after a long battle with cancer. Chairman Levi opened the floor for comments and recognition of Tom Fuentes' service.

Chairman Levi next invited Mr. Schanz to speak about the Inspector General's Semiannual Report to Congress (SAR) for the period of November 1, 2011 to March 31, 2012. Chairman Levi solicited comments and questions from Board members. President Sandman offered a few suggestions on the Board's transmittal to accompany the SAR.

MOTION

Father Pius moved to approve the transmittal, as modified. Dean Minow seconded the motion.

VOTE

The motion passed by a voice vote.

Chairman Levi solicited public comments. Mr. Greenfield, NLADA, asked if the SAR could be made available to the public, as it has been in the past. Mr. Schanz replied that it will be made available after it is submitted to Congress. Mr. Greenfield commented that it would

have been helpful to have a copy of the SAR and accompanying Board transmittal to Congress prior to the Board meeting in order to follow along and provide comments during the meeting.

There were no other comments.

There was no other business to consider.

MOTION

Dean Minow moved to adjourn the meeting. Father Pius seconded the motion.

VOTE

The motion passed by voice vote.

The *open session* meeting of the Board adjourned at 2:14 p.m.

Draft Strategic Plan



Legal Services Corporation Strategic Plan 2012-2016

Draft of June 2012

Legal Services Corporation

Strategic Plan 2012 – 2016

Part One: Overview

Fundamental Principles

The Legal Services Corporation (LSC) was founded on a shared American ideal: access to justice regardless of one's economic status. Every day, people across America recite the Pledge of Allegiance and make a commitment to a nation: "*with Liberty and Justice for All.*"

In the Preamble to the United States Constitution, the Framers recognized that to "establish justice" was a primary goal of the new Republic. But justice is no mere abstraction; it requires clear laws and an impartial system of courts and judges to adjudicate disagreements and vindicate rights. George Washington called the true administration of justice, "the firmest pillar of good government." This promise of justice for all can only be realized when all have access to the system that administers justice.

Congress recognized this in its finding and declaration of purpose in the Legal Services Corporation Act: "...for many of our citizens," the statute emphasizes, "the availability of legal services has reaffirmed faith in our government of laws." As Judge Learned Hand said, "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

A Crucial Time

At the same time, LSC acknowledges that the financial resources available from the federal government are limited, especially given the current state of the national and global economies. Established to provide financial and strategic support for civil legal assistance throughout the United States and its territories, LSC is the largest single funder of civil legal aid programs in the nation. Currently, LSC provides grants to 135 independent programs with more than 900 offices serving every county in every state, the District of Columbia, and various territories of the United States.

Virtually all of LSC's current revenue comes from annual congressional appropriations. Local legal services providers depend upon a combination of these federal funds, state and local government funding, revenue from Interest on Lawyers' Trust Accounts (IOLTA), and private donations.

Following four straight years of appropriation increases, LSC has faced significant reductions in the last two budgetary cycles. Since April of 2011, LSC's federal appropriation has been reduced by 18 percent. In addition, LSC's grantees have experienced funding reductions from other

sources. Revenue from IOLTA — a source of significant support for local legal aid programs — continues to fall as interest rates remain very low. Budget pressures have caused many state and local governments to reduce their appropriations for civil legal services. LSC grantees reported a two percent reduction in funding from non-LSC sources in 2011.

LSC recently surveyed the programs it supports to learn the impact of funding reductions on their operations. The results were sobering. Including layoffs that the programs anticipate implementing in 2012, the programs project a loss of 582 attorneys, 250 paralegals, and 394 support staff since the end of 2010 — a loss of 1,226 full-time legal services employees, a 13 percent reduction in staffing.

Twenty-four programs reported that they expect to close offices in 2012. Because many of these closures will occur in rural areas, eligible clients will lose the ability to access lawyers within their communities. This will mean effectively no access to legal assistance for an increasing number of America's rural poor. A number of programs report that they have frozen or reduced employee salaries and benefits, reduced intake hours, and eliminated categories of services. Legal aid lawyers were already the lowest paid group in the legal profession before these freezes and reductions.

The same financial challenges that lead to reduced funding also contribute to the rising need for civil legal assistance. While capacity is falling, the population eligible for civil legal services at LSC-funded programs continues to rise steeply. Today, LSC estimates that more than 64 million Americans are eligible for services at the programs it funds — an all-time high, and an increase of 26.6 percent since 2007, before the recession began.

Strategic Goals

Despite the challenges of the current state of affairs, LSC has a duty to the American people to pursue its fundamental mission of access to justice. With this in mind, the LSC Board of Directors has prepared this plan to set forth the strategic goals that will guide LSC for the next five years.

***LSC's primary goal is to maximize the availability, quality, and effectiveness of the civil legal services that its grantees provide to eligible low-income individuals.*¹**

To achieve this goal, LSC must work to afford its grantees the resources, tools, and management expertise to most effectively reach and assist their clients. LSC will pursue its work in this crucial period along three avenues:

¹ Throughout this document, "low-income" and "poor" refer to the definitions in LSC's governing act and include compliance with the eligibility rules. See **Legal Services Corporation Act As Amended, 42 U.S.C. 2996 et seq.**, Public Law 93-35593 Congress, H.R. 7824, July 25, 1974; LSC Act, Public Law 95-222, 95 Congress, H.R. 6666, December 28, 1977; LSC Reauthorization Act, and other amendments. See also 24 C.F.R. §§ 1611 & 1611X.

- (1) identifying and replicating best practices associated with delivering high quality civil legal assistance to the poor by its grantees;
- (2) promoting the development and implementation of technologies that maximize the availability of legal information and assistance; and
- (3) expanding the availability of civil legal assistance beyond LSC's grantees through the most effective use of pro bono services and other private resources.

In order to achieve this first goal, which reflects its fundamental mission, LSC will employ robust assessment tools to ensure that it identifies, recognizes, and replicates the best practices among its grantees and those qualities that define its highest-performing grantees. LSC also will provide attention and assistance to lower-performing grantees and to grantees who may request such assistance. Meeting this goal will be a significant challenge in the current funding environment. LSC's approach to improving quality must be focused on promoting innovation that accomplishes more with fewer resources.

LSC's second goal is to become a leading voice for civil legal services for poor Americans.

LSC will provide national leadership and opportunities for collaboration with others committed to promoting civil legal services, including other funders of legal aid, governmental agencies, and judicial systems throughout the country. The primary goals of this collaboration will be: (a) to increase awareness of the significance and value of civil legal aid with the intention of increasing public and private resources devoted to this purpose; and (b) to more closely match resources and needs, identify innovative approaches, and coordinate LSC's efforts to achieve maximum effectiveness.

In order to become a leading voice, LSC will:

- identify federal government agencies that might have additional resources available for LSC grantees and to expand awareness of the availability of such resources to grantees;
- identify and reach out to national foundations and other sources to broaden LSC's funding base, in order to:
 - provide funds for research, the development of promising practices, and other projects with the potential to improve civil legal assistance more generally, and
 - create a renewed awareness in the philanthropic community about legal services for the poor;
- work together with providers of legal services to low-income individuals to raise public awareness about civil legal aid and both the positive contribution it makes in the lives of the poor as well as the economic benefits to the government and to society as a whole; and
- improve communication about the work that LSC and its grantees do in the cause of providing legal services to the poor.

LSC's third goal is to achieve the highest standards of fiscal responsibility both for itself and its grantees.

The United States Congress entrusts LSC with funds collected from the American taxpayer. Both to live up to that trust and to justify further confidence, LSC will be a prudent steward of the resources allocated to it. LSC will comply with the parameters expressed by Congress and conform to the highest peer-reviewed professional standards of fiscal transparency and accountability, both within the Corporation and in its fiscal oversight of those who receive funds from LSC.

In January 2012, the LSC Board of Directors approved the recommendations of its Financial Oversight Task Force. In achieving this goal, LSC will implement the recommendations of the Task Force.

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Part Two: The Three Strategic Goals

1. Maximize the Availability, Quality, and Effectiveness of Legal Services

Maintenance of the rule of law is, and always has been, a central purpose of the American Republic. The rule of law requires an opportunity to vindicate one's legal rights, which often requires the assistance of counsel. For those unable to afford a lawyer, this lack of qualified legal counsel results in a rule of law eroded in meaning and effect. It is therefore critical that LSC continue to improve the availability, quality, and effectiveness of civil legal services for those qualified under federal law to receive them.

Initiative One:

Identify, promote, and spread best practices in meeting the civil legal needs of the poor

All civil legal services providers across the country face the challenge of limited resources while seeking to address growing unmet needs and management challenges. Many of LSC's grantees have developed effective approaches to one or more areas of civil practice affecting the poor. Many grantees have also devised successful strategies for partnering with pro bono lawyers, law schools, and other providers to extend their work or otherwise increase responsiveness to clients and potential clients.

Because of its unique position as the federally-created, national organization in this field, LSC can and must lead an initiative to identify, share, and promote best practices among its grantees and other organizations in providing high-quality and effective legal information, advice, and representation. Best practices include approaches to particular issues, such as assistance in the face of mass foreclosures and in the area of family law, as well as strategies for expanding access to legal services. Best practices also involve acknowledging differences among grantees' client populations that may significantly affect the manner in which legal services are provided, but which may be difficult to quantify. Such variables include, among other things, geographical isolation, regional court practices, non-English language use, and distinct cultural communities.

- **Best practice identification:** LSC's assessments of grantee programs will identify promising practices and vet them among other grantees to highlight approaches that warrant being named a "best practice." In addition to the suggestions made by its own Financial Oversight and Pro Bono Task Forces, LSC will also solicit suggestions from grantees and other providers and funders to enlarge the pool of potential best practices. This will also include the identification of those federal agencies that are most involved in the types of legal issues that LSC grantees handle for their clients so as to facilitate coordination with these agencies to better streamline responsiveness to the needs of clients.

- **Best practice resource:** LSC will become a “go-to” place for collecting and sharing information about best practices in the provision of civil legal assistance. This should include enhancing web-based resources, including a user-friendly library tool that improves the accessibility, scope, currency, and use of the library currently maintained by LSC.
- **Best practice sharing:** LSC will devise successful ways to share the best practices it identifies through the potential use of web tools, social media, conferences, and other techniques that grantees may find helpful in promoting dialogue and peer assessment.
- **Best practice expansion:** LSC will develop benchmarks and share the best practices it identifies.

Initiative Two:

Implement a new performance management system

As part of ensuring high quality legal services, LSC must be able to measure the performance of grantees fairly, objectively, and effectively. It is important for LSC to identify both higher- and lower-performing grantees so that it can recognize best practices and assist those grantees in need of improvement.

LSC will design a new performance management program with input from experts in non-profit management and from grantees, which should include:

- **Meaningful performance standards and metrics,** known to and understood by all participants. The standards will be developed in collaboration with grantees to support the goals of the Legal Services Corporation Act – quality, effective civil legal services for low-income individuals, and an efficient and appropriate use of appropriated funds—and should be designed to avoid imposing unnecessary burdens on grantees.
- **Quantitative metrics will be designed to measure three key areas:**
 - ▷ Outcome metric(s): Evaluating how a grantee organization’s delivered legal services translate into identified benefits for individual clients, as well as other societal benefits and governmental savings.
 - ▷ Efficiency metric(s): Evaluating the cost-effectiveness of a grantee organization’s activities by measuring how invested federal grant dollars translate into an amount of legal services delivered.
 - ▷ Needs Assessment metric(s): Ensuring that grantees effectively assess the needs of eligible clients in their service areas, establish priorities reflecting such assessment in a manner consistent with the Legal Services Corporation Act and LSC regulations, and evaluate their effectiveness in meeting those priorities.

- **A revised data-collection and analysis process.** Data collection from grantees should avoid impeding their organizational efficiency. Online data collection should be structured to reduce reporting costs and to increase analytical effectiveness. To the extent practicable, the data collection required by other major funders of LSC grantees should be reviewed in order to minimize redundancy.
- **Performance triggers.** Performance measures cannot alter the legislatively-determined funding formula that sets the level of Basic Field grants. When clear, evidence-based standards of performance are established, LSC will seek to provide performance incentives to grantees outside these funding formulas. Following the establishment of a fair and objective data-collection and analysis process, LSC should be prepared to implement a system under which rewards or corrective actions would be triggered.
 - ▷ Any rewards or corrective measures will be implemented only when LSC is confident of the quality and fairness of the performance standards. While such rewards or corrective measures would only be introduced after the implementation of such standards, planning for them could be developed concurrently.
 - ▷ Rewards for grantees exceeding a standard (e.g., a high percentile ranking on established quantitative metrics) might include:
 - LSC certification as a top-performing organization;
 - Invitation to special LSC recognition programs;
 - Increased access to funds or projects generated through LSC’s own advancement efforts; or
 - Ability to compete for special grant programs that LSC may administer.
 - ▷ Corrective actions for grantees consistently falling below a minimum standard (to be specified only after opportunity for public review and comment) might include:
 - A special review by LSC or peers;
 - Required professional development activities (such as training);
 - Implementation of specific quality or efficiency processes;
 - Enhanced program oversight requirements;
 - Suggested changes in staffing or program focus; or
 - Other actions permitted by applicable law and corresponding regulations.

Initiative Three:

Provide legal practice and operational support to improve measurably the quality of civil legal services to the poor

LSC's congressionally mandated oversight responsibilities enable and obligate it to help grantees maximize their performance through support for their practices and operations. Oversight should be coupled with assistance to achieve such performance.

Assistance to grantee programs should include the following:

- **Grantee training.** LSC will supplement and extend training efforts to reflect the growing expertise in best practices and to improve and increase collaboration across grantees and other providers. LSC will aim to offer training programs using its own Management and Grants Oversight budget, at little or no cost to its grantees. LSC will review the possibilities of training efforts in at least the following areas:
 - ▷ Best Practice Training: Training programs to share information and discussion about best practices both to deepen peer review and to promote the adoption of best practices.
 - ▷ State-of-the-Art Training from Other Organizations: Timely, high-quality training programs offered by other organizations will be identified and, where possible, made available to grantees as cost-effectively as possible. In addition, LSC will work to stimulate the creation of training programs by other organizations where indicated by the expertise, capacity, and leverage that could be achieved.
 - ▷ Compliance Training: Training to enable grantees to meet LSC's financial, regulatory, and reporting requirements as efficiently as possible, and to minimize the need for enforcement actions.
- **Peer support and collaboration programs.** Interaction among LSC grantees is often the result of grantees' initiatives. The experience and advice of colleagues is a potent resource for grantee staff and management. LSC will develop peer support and collaboration programs, including, for example:
 - ▷ Online collaboration tools for LSC grantee staff to discuss relevant issues among themselves, such as technical advice, pro bono practices, partnerships with law schools and other organizations, identification of other resources, management expertise, and fundraising.
 - ▷ National in-person conferences for leadership of grantee organizations. These would identify prospects for collaboration and allow the sharing of expertise. They would also permit LSC to learn from the practical experience of grantee leaders and to improve its support of programs as a result.

- **Management support.** Grantee organizations face many common issues, including succession planning, fundraising, hiring and retention, financial management, practice management, case management, and operations. LSC will develop management support programs, including, for example:
 - ▷ An Executive Director mentoring program – A “matchmaking” service available to Executive Directors who want to tap the experience of a longer-tenured peer at another organization.
 - ▷ A management tool library, including sample materials for human resources, requests for proposals, contracting documents, and fundraising letters and materials.
 - ▷ Training programs for grantee boards of directors that focus on LSC-specific issues and avoid duplication of training programs already available from other organizations.
 - ▷ Training programs to promote the participation and effectiveness of non-attorney and client representatives who serve on grantee boards of directors.
- **Innovative technology for delivering professional development programs.** Online technology tools are increasingly effective for professional development activities, and LSC should develop a repertoire of online, on-demand tools and make online availability the default method of delivery. Many of these tools are available as low- to mid- cost open-source or software-as-a-service models. LSC will explore these alternatives.
- **Enhance Private Attorney Involvement (Pro Bono).** In 2011, the LSC Board of Directors invited some of America’s best legal practitioners, judges, and public advocates to assist it in identifying ways in which to maximize the use of pro bono involvement in providing legal services to the poor. The five working groups of this Pro Bono Task force provided initial reports at the April 2012 meeting of the LSC Board of Directors. The Task Force was divided into the following working groups: Technology; Obstacles to Pro Bono; Rural Issues; Urban Issues; and “Big Ideas”. The LSC Board and management will continue to review the recommendations made by this Task Force in an effort to implement those practices that can best assist its grantees in providing civil legal services to the poor.

Accountability

LSC must hold itself accountable for results, just as it holds its grantees so accountable. LSC’s efforts on these initiatives will be organization-wide, but led by a new Office of Grants Management. For Initiative Three, LSC’s efforts will be assisted by the technical expertise of the Office of Information Technology. The success of LSC’s efforts will be measured by progress in the development of standards and strategic programs, and by increasingly objective measures of

the year-over-year improvement of LSC grantees as a whole. LSC management must also develop procedures to provide for periodic reassessment of key metrics, both of its own performance and that of its grantees, to ensure that they reflect up-to-date LSC mission priorities and objectives. LSC will staff these initiatives and provide the necessary training as part of its forthcoming Strategic Human Capital plan. This will include the formation of the Office of Grants Management, containing the required analytical expertise and a robust training and technical assistance capacity.

2. Become a Leading Voice for Access to Justice and Quality Legal Assistance in the United States

The nation needs greater and more focused leadership in addressing the civil legal needs of the poor. As the only federally-created, national legal services organization, as the largest single funder of civil legal services in the United States, and with its detailed knowledge of the activities of 135 legal services programs serving every state and the territories, LSC has both the opportunity and the obligation to play a critical leadership and organizational role in advocating and securing access to justice for the poor in civil matters. Promoting understanding of the role and value of civil legal services and acting in partnership with other funders and stakeholders in the justice system are essential to expanding the public and private support necessary to sustain the work of LSC's grantees.

Initiative One:

Provide a comprehensive communications program around a compelling message

Developing a commonly understood, consistently delivered, well-articulated, and compelling message about access to justice is critical for maintaining and expanding both public and private funding for civil legal services. Without expansion of resources – whether from public or private sources – access to justice will remain limited. While LSC is a critical national funder of civil legal services, it is but one among many sources of assistance. As such, LSC's message must be developed in conjunction with other stakeholders and actors in the justice system, including clients, courts, federal agencies, state-level Access to Justice Commissions, pro bono networks, IOLTA and other grantmakers, and the actual providers of legal services, whether or not funded by LSC.

The creation of a messaging framework will give grantees a narrative that they will be able to use to recruit board members, explain their work to their communities, and cultivate other potential funders. Components of the communications programs will include:

- **The establishment of a compelling narrative** that is adopted by all LSC staff and board members for communicating LSC's mission, activities, and value.
- **The creation of a short message** and other potential communications that could appear in brochures, booklets, other materials, and online.
- **The development of supporting materials** to support the common narrative.

Initiative Two:

Build a business case for funding civil legal services

In addition to a better narrative message, LSC must better explain the financial and economic benefits that result from funding civil legal services for the poor. Because civil legal services programs can save government and society money, funding these services is an efficient use of government resources. Averted foreclosures and evictions, for example, avoid homelessness with all its attendant costs and collateral consequences. Likewise, civil restraining orders in domestic violence cases can avoid future hospitalizations and unemployment.

Some studies at the state level have already quantified the economic benefits of civil legal services, but further evidence is needed. Development of this data is intrinsically linked to the development of valid outcome measurements as a component of the Performance Management Initiative (1.2), as discussed above. It will also be a prerequisite for evidence-based communication and advocacy, by demonstrating not only direct benefits to clients served, but also indirect benefits to society, the courts, and the public treasury.

There are three primary courses of action to build this case:

- **Gather and analyze broad, nationwide data** on the results achieved in civil legal services cases as the starting point for a strong economic analysis;
- **Conduct research** on the best methods for quantifying the cost savings realized by the outcomes achieved; and
- **Create a research-backed case** for the investment in civil legal services that shows the value of current expenditures and reasonable estimates of the public value that would be created by increased funding – a projected marginal value for legal aid dollars. As data are gathered, this research will be incorporated into LSC’s budgeting process and Congressional communications.

Initiative Three:

Recruit and enlist new messengers and sources of funds to increase private support for civil legal services

The legal services community needs to enlist new messengers to make the case for legal aid to new audiences. LSC must find those who have already embraced the case for civil legal services and made it their own, and use these exemplars to recruit others who would approach the issue from a different angle in order to reach different audiences. Members of the LSC Board of Directors can model the role of community leaders as spokespersons for civil legal assistance. LSC must also remain active in seeking potential non-Congressional sources of funds for the organization, to broaden its financial base and provide funds for special initiatives, while at the same time integrating support for legal services within the field of national philanthropy.

LSC can and should ensure that individuals who are not part of the civil legal services community as well as the traditional advocates are equipped with relevant information and opportunities to speak about civil legal services for low-income individuals. LSC must expand the base of private financial support for civil legal services. There are at least three steps LSC will pursue:

- **Use the legal services network** to help identify those outside the community who are making the case on a local, regional, and national basis;
- **Engage potential messengers** to see how best to take advantage of their natural inclinations on a broader or more targeted basis;
- **Expand the network** through these messengers to see whom they know; and
- **Seek funding opportunities** from other grant-making organizations for special projects and initiatives consistent with this Strategic Plan and LSC's statutory mandate.

Initiative Four:

Institutional advancement and grantee development support

As a creation of the federal government, LSC will remain dependent on the federal treasury for all of its basic field grants. Nevertheless, LSC should pursue private sources of financial support that will complement its Congressionally-given mandate, within the limitations imposed by applicable law. To do this, LSC will create an internal advancement office in order to support its own ability to fund the following:

- Research projects;
- Fellowships created for new lawyers and senior lawyers to serve in legal services programs;
- Create appropriate public service announcements and public education materials;
- Launch of an honorary auxiliary board;
- Launch of a national alumni association; and
- Other pilot projects and initiatives.

LSC will continue to pursue the possibility of creating this internal capacity through a grant (or grants) that could provide the necessary financial support to establish such an operation. This internal office would not in any way compete with fundraising efforts of LSC grantees. LSC management, together with oversight from the Institutional Advancement Committee of the Board, sensitive to this issue, will work to assure that such competition for funds does not occur.

In addition, LSC has recognized that many of its grantees need support in their own work of institutional advancement. With this internal advancement office, LSC will be able to provide such advice and assistance to grantees in this important area, as follows:

- LSC will combine knowledge and insights from all of its communication efforts with those from the work of LSC's Institutional Advancement Committee to create materials and support training for grantees in their development efforts.
- LSC (including members of the LSC Board, to the extent of their availability) will work with grantees to develop and share common communications strategies and materials.
- LSC will share with its grantees strategies on how and when to deliver compelling messaging, on how to identify alternative sources, and on how to cultivate long-term relationships with donors.

Supporting grantees in their development efforts would provide them with:

- (1) An understanding that LSC is focused on their most critical issue; and
- (2) New strategies for developing private-sector resources.

Providing grantees with development support should include:

- **Delivering** the LSC narrative, the business case, and information on how best to use non-traditional messengers so that LSC's grantees have the tools needed to make their own cases.
- **Training** on the various tools, so that grantees fully understand their messages, their potential uses, and how they should be used.
- **Sharing development strategies** through online and in-person seminars, so that grantees can be introduced to new concepts, ask questions, and begin to use the concepts with local potential donors.
- **Assessment** of efforts through the creation of appropriate performance metrics to evaluate the effectiveness of LSC development and development support endeavors.

Accountability

LSC's efforts on these initiatives will be organization-wide, but led by the President of LSC, supported by Government Relations and Public Affairs, the research and informational components of the new Office of Grants Management, and a designated Institutional Advancement Officer (for Initiatives Three and Four). The Office of Financial and Administrative Services will provide technical support as needed for grant applications and evidence-based budgeting (as part of Initiatives Two and Three). The LSC Board will be accountable for continued engagement in building the public profile of LSC and the development of new policies to implement this initiative. The success of LSC's efforts will be measured by progress in formation of strategic partnerships, the wide adoption of its developed messaging, and by objective measures of the year-over-year improvement of LSC grantees in acquiring external sources of funding. LSC management must also develop procedures to provide for periodic reassessment of these key metrics to ensure that they reflect up-to-date LSC mission

priorities and objectives. LSC will staff these initiatives and provide the necessary training as part of its forthcoming Strategic Human Capital Plan, including the acquisition of development, communications, and economic expertise as required.

3. Ensure Superior Fiscal Management

The American taxpayer is the ultimate source of the funds that LSC distributes to its grantees. At a time when Americans are tightening their belts, it is incumbent upon LSC to ensure that its grantees are managing and spending these taxpayer funds prudently. In addition, the money entrusted to LSC and its grantees is meant to be used in service to the poor. Money that is better spent will be able to aid more of those in need. Proper financial oversight is not in competition with the goal to assist the poor, but enhances the ability to accomplish it.

In accordance with the recommendations of LSC's Fiscal Oversight Task Force, LSC will strengthen its fiscal oversight processes by conducting a thorough review of current processes, by implementing improved and streamlined processes, and by adopting new organizational structures to reduce redundancies and improve effectiveness. LSC will aim to give Congress and the American people confidence that money appropriated to LSC is managed and expended prudently and lawfully.

The recommendations of the Fiscal Oversight Task Force, adopted by LSC's Board of Directors in January of 2012, encompass the initiatives necessary to achieve this goal. The following is a summary of those initiatives:

Organizational Identity and Mission

- Clarify and affirm LSC's responsibilities related to grantee fiscal oversight.
- Establish a consistent "tone at the top," define and promulgate a strong organizational culture, and continue to keep the LSC Board active and engaged in its oversight of grant-making operations.

Communication and Coordination among the Board, Management, and the LSC Office of Inspector General

- Consolidate management's oversight responsibilities, currently dispersed among the Office of Program Performance (OPP), the Office of Compliance and Enforcement (OCE), and the Office of Information Management (OIM), into one office (called the Office of Grants Management (OGM)), instituting a "cradle-to-grave" approach to grants management and fiscal oversight.
- Appoint a Vice President-level individual to lead OGM whose background includes grants management and internal controls.
- Document and memorialize the roles, expectations, and operating practices of LSC's Board, management, and the LSC Office of Inspector General (OIG) in order to ensure that all necessary fiscal oversight activities are undertaken and to enable progress to be maintained during periods of leadership transition.

- Formalize and maintain or increase the flow of fiscal oversight-related information and communication to the LSC Board from management and the OIG.

Grantee Fiscal Oversight Process

- Conduct a unified, comprehensive LSC risk assessment process (incorporating input from the OIG and the grantees' Independent Public Accountants (IPAs)) that includes identifying financial risks and incorporating current methods and best practices for addressing such risks through fiscal oversight.
- Structure management's grantee reviews to comprehensively address financial risks, both prior to grant award and post-award.
- Create systems to support timely and efficient sharing within LSC of appropriate information about grantees and monitoring of the status of grantee corrective actions.
- Identify, monitor, and disclose conflicts of interest related to staff and grantees.

Knowledge, Skills, and Experience

- Encourage the sequencing of Board appointments so as to stagger the terms of Board members as permitted by the LSC Act.
- Continue the practice of utilizing non-Board members with experience in accounting, finance, and internal controls to serve on key financial-related committees and urge the Boards of grantee organizations to adopt a similar practice.
- Ensure that employees filling fiscal oversight roles within the new OGM structure have the necessary knowledge and skills.
- Provide directed training to staff, grantees, grantee Board members, and IPAs.

Accountability

LSC's efforts on these initiatives will be organization-wide, but led by a new Vice-President for Grants Management, acting in coordination, where appropriate, with the Office of Inspector General. The LSC Board, the Office of Legal Affairs, and the President of LSC will be accountable for policies supporting improvements in fiscal oversight, and for rapid and appropriate responses to wrongdoing. The success of LSC's efforts in this area will be measured by the adoption and implementation of a risk-based program of assessment, and by objective measures of a year-over-year reduction of risk indicators among LSC grantees as a whole, as well as by a decline in losses to malfeasance, due to more rapid detection of waste, fraud, and abuse. LSC management, in coordination with the OIG, must also develop procedures to provide for periodic reassessment of these key metrics to ensure that they reflect up-to-date LSC mission priorities and objectives. LSC will staff these initiatives and provide the necessary training as part of its forthcoming Strategic Human Capital plan, including the acquisition of financial, accounting, and auditing expertise as required.

Part Three: Achieving these Goals

The LSC Board, assisted by the leadership of LSC, will periodically (but at least annually) review the three main strategic goals listed above. This review should include the concrete steps that have been taken to achieve each initiative proposed for the various goals as well as designated metrics for determining the degree to which the initiatives taken support each goal.

Conclusion

Access to justice is a founding principle of this nation and the commitment of Congress in creating LSC. At this challenging time, LSC commits to improving access to justice for the poor by improving the quantity and quality of civil legal assistance, promoting innovation that accomplishes more with fewer resources, and demonstrates the highest standards of fiscal responsibility through its work and the work of the legal service providers it supports. The trust of the American people demands no less.

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Appendix

Appendix: The Strategic Planning Process

The strategic plan has been informed by research, interviews, and surveys conducted over a six-month period. It has been facilitated by a consultant, VShift.

A variety of documents were reviewed during the course of the process. They included past Strategic Directions documents for LSC, statutes and regulations, and literature measurement methodologies and metrics.

Additional primary research involved such sources as financial reports from LSC-funded organizations, staffing plans, program overviews, news reports, materials from civil legal services advocacy organizations, and best practices in similar organizations.

Most of these documents were reviewed prior to the start of the in-depth interviews, but some of them were identified by interview subjects and were reviewed as they were suggested.

Perspectives from stakeholders were collected via a combination of in-depth interviews and online surveys.

In-Depth Interviews

During the first three months of the project, over 75 in-depth interviews were conducted by a combination of VShift, LSC board members, and LSC senior staff.

Discussion guides were prepared for different interview groups, and the interviews lasted an average of 45 minutes each, with the shortest being about 30 minutes and the longest going well over 90 minutes.

The interview subjects consisted of five primary groups:

- LSC Board of Directors
- LSC Staff
- LSC Grantee Executive Directors
- External stakeholders
- Members of Congress and congressional staff

The goal of the interviews was twofold: (1) to gain insight into the views of the different audiences; and (2) to seek innovative ideas from members of different constituencies.

Surveys

Four different audiences were surveyed during this process:

- LSC Grantee Executive Directors

- LSC Grantee Board Chairs
- LSC Grantee Client-Eligible Board Members
- LSC Staff

These were administered both via an online service (Survey Monkey) and through offline methodologies for the client-eligible board members.

All grantee Executive Directors and board chairs and all LSC staff members were invited to complete the online survey. Client-eligible board members were invited to participate by grantee Executive Directors and Board Chairs.

The survey was designed: (1) to gather qualitative information as a baseline that can be used for comparison in the future, (2) to ensure that current views are understood and taken into account in the planning process, and (3) to have the widest possible participation in the planning process.

The survey questions covered three main areas: (1) basic demographic information, (2) the respondents' perceptions of LSC effectiveness, and (3) respondents' reactions to potential LSC activities going forward.

LSC's consultant, VShift, prepared reports from these data collection activities and briefed the Board on the findings.

Board Briefings

VShift conducted two briefings for the LSC Board of Directors. These included:

- Key insights from VShift analysis done to date;
- A range of initial hypotheses on structuring the strategic plan;
- Potential marketing and communications approaches to address funding challenges;
- Key opportunities for achieving quick results; and
- Legislative priorities, challenges, and options.

These were primarily one-way briefings focused on providing the Board with essential information, but they also included clarifying questions, initial reactions, and some feedback from individual Board members.

Comments

Richard Sloane

From: webmaster
Sent: Monday, July 09, 2012 1:28 PM
To: LSC Strategic Plan
Subject: Form submission from: Comment Submission Form for LSC Board of Director's draft Strategic Plan for 2012-2016

Submitted on Mon, 07/09/2012 - 13:27

Submitted by anonymous user: [67.133.83.227] Submitted values are:

Your name: Dennis Groenenboom

Your e-mail address: dgroenenboom@iowalaw.org Your phone number: 515-243-2980 x 1620 Your comments:

Thank you for the opportunity to submit comments on the draft LSC Strategic Plan 2012-2016. We applaud LSC and the Board for undertaking this process. We are at a critical stage in the delivery of legal services to low-income Americans and believe that it is critical for LSC to be thoughtful, focused and strategic in this effort. While many aspects of the plan are excellent, these comments will be focused on some of the areas we believe further analysis should be undertaken and in some instances a very different direction taken.

Several aspects of the Draft Strategic Plan focus on development of a variety of national standards. This includes the development of new performance management system that will allow LSC "to measure the performance of grantees fairly, objectively, and effectively." This would include performance standards in metrics, quantitative metrics and revised data collection and analysis process.

As originally envisioned, the Legal Services Corporation was designed to maximize local control over the formation and delivery of legal services in local program service areas. While certainly the national corporation, as a critical funder, has a role to play in ensuring quality and dealing with low performing programs, steps that should be taken in order to fulfill this objective need to be carefully considered and implemented in light of this long-term history of local control. Local programs, through their Boards of Directors are given standards through which to assess needs and establish priorities. Many of LSC's regulations of programs give the parameters for local Boards' exercise of this function, but local Boards necessarily need to have the flexibility to make these decisions based on local needs and the current structure ensures this local decision-making.

LSC should not be setting forth outcome, efficiency and needs assessment metrics that interfere with these local decisions. To the extent that there are indeed issues with the manner in which programs implement their own priorities and deliver services and could be doing so in a more effective manner it is certainly a role for LSC's assistance and guidance. On the other hand development of national standards will most likely result in a one-size fits all approach, which will diminish and/or alter services throughout the country to meet the national metrics. There are a host of other federal policies that can be pointed to as examples of this system of national standards gone awry.

It is also important for the plan to directly recognize the potential impact of any national measurement standards on a program's ability to provide services. While programs could certainly more accurately measure people turned away, it must be recognized that to the extent that resources are directed toward recordkeeping and reports, fewer services are provided. This is seen in many aspects of field program's work including for example, case information disclosure forms; annual self certifications; statement of facts; and signed attestations. The strategic plan should include a goal of reviewing these types of requirements that are placed on programs and undertake steps, whether they be internal within LSC or external such as going to Congress or other sources, to eliminate unnecessary recordkeeping and reporting and streamlining other requirements where possible and appropriate. In fact, it is important to keep in mind that many of the individuals who have supported reduction in funding over the years have, perhaps intentionally, sought to reduce

the ability of programs to focus on delivery of services and instead be required to focus more on administrative requirements that have nothing to do with either quality or accountability. The Strategic Plan should set forth the framework for reviewing, revising and eliminating unnecessary requirements.

The draft plan seems to focus little attention on the largest issue confronting LSC and its grantees, that being the significant reduction in federal resources. If funding were to be provided at the same level, adjusted for inflation, as was appropriated in 1980, funding would need to be \$1.1 billion. The draft plan seems to suggest that if only there were better measurements and programs were more efficient, current resources would be sufficient to meet client need. The plan should focus specifically on the development of a strategy to increase federal funding. This strategy should focus on building support regardless of who is in political power, as that seems to be the primary factor in determining funding levels, rather than anything related to the delivery of services. The strategic plan should include working in collaboration with supportive organizations to identify and nurture relationships with members of Congress who can become true believers of equal access to justice. There needs to be a commitment to work with both sides of the political aisle. This strategy should incorporate clients themselves and their actual stories of representation as the centerpiece of the Corporation's efforts to increase the understanding of the role that access to the court system plays for the most vulnerable Americans and how this access can work to achieve national goals.

The plan also talks about establishing grantee training, peer support and collaboration programs, management support and other initiatives. The plan needs to specifically take into account the other resources that are available to programs including but not limited to the American Bar Association, National Legal Aid and Defender Association and Management Information Exchange in assessing the proper role of LSC in the larger access to justice community. LSC is but one of the players and the role of all should be taken into account as the Strategic Plan is developed.

Financial incentives for certain "top performing organizations" should not be included as part of the plan. This is a significant departure from the approach that has been taken by LSC, which would jeopardize LSC's commitment to providing an equal amount per poor person throughout the country and could not be implemented without significant harm to LSC's ability to be an overseer of the national distribution system. Also, LSC should not be asking Congress to provide a specific line-item for such a "rewards program" as any such effort would likely come out of basic field or other existing line-items. Raising money privately to reward cost-effective programs also would compete with existing programs and further diminish both LSC's authority as a player in the justice community and divert resources needed to address LSC's core functions.

It certainly is appropriate for LSC to develop tools for identifying programs around the country that need more support and then work to strengthen them.

The plan should include a commitment to develop tools for the evaluation and self-evaluation of programs that face challenges that impede them in the goal of achieving their maximum potential. Based on these evaluations, LSC should work with those programs to develop a strategy to address these challenges and, if necessary, provide financial support to strengthen them from existing discretionary funds.

The plan should also focus more on working to address succession planning issues. The 2011 Summary of LSC Staffing Levels shows that 65% of the Executive Directors nationally have served for 30 years or more, meaning that it is probable that in the next 5 years a sizable number of them will be leaving their leadership positions. That same report shows 50% of Litigation Directors and 50% Deputy Directors as having a tenure of 30 years or more. On page nine of the Draft Strategic Plan there is passing reference to succession planning and the provision of management support, but the plan's overall goal of maximizing availability, quality and effectiveness of legal services programs will be increasingly difficult for programs that are faced with rebuilding their leadership structures. The plan should give higher priority to recognition of the looming leadership changes that were taking place nationally among recipients and as a result it should include a goal of developing strategies for helping programs successfully transition, thereby using this as an opportunity to provide training and support focused on the goal of maximizing the availability, quality and effectiveness of civil legal services.

Finally, the plan also talks about better use of technology to improve delivery. LSC should reevaluate the focus of the Technology Initiatives Grant program to focus more on expanding the availability of proven technological innovation. Replication of successful grant awards in other programs should become the first priority. Getting successful baseline technology to all programs should be a part of LSC's Strategic Plan.

Thank you for the opportunity to submit these comments. For further information or clarification, please feel free to contact me.

Dennis Groenenboom, Executive Director
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515.243.2980 x 1620
dgroenenboom@iowalaw.org

The results of this submission may be viewed at:
<http://www.lsc.gov/node/2233/submission/2919>

Richard Sloane

From: Rebecca Sandefur <rsandefur@abfn.org>
Sent: Monday, July 09, 2012 2:12 PM
To: Richard Sloane
Subject: request for public comment on draft Strategic Plan for 2012-2016
Attachments: Sandefur comment on LSC draft strategic plan 7.9.12.pdf

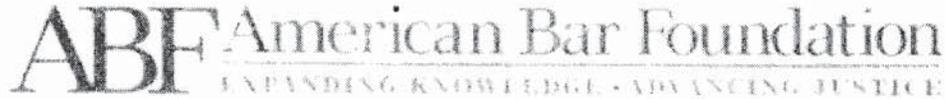
Dear Mr. Sloane,

The attached letter presents my comments on the LSC's draft Strategic Plan, in response to the request for public comment.

Thank you for your consideration.

Yours sincerely,

Rebecca L. Sandefur
Assistant Professor of Sociology and Law, University of Illinois at Urbana-Champaign
Senior Research Social Scientist, American Bar Foundation
office: 217.333.6100



Dr. Rebecca L. Sandefur
Senior Research Social Scientist

July 9, 2012

Mr. Richard L. Sloane
Chief of Staff and Special Assistant to the President
Legal Services Corporation
3333 K Street NW.
Washington, DC 20007
sloaner@lsc.gov

Dear Mr. Sloane,

I write as a scholar whose research centers on legal professions, the delivery of legal services, and access to justice. Part of my work involves heading up the access to justice empirical research initiative at the American Bar Foundation (ABF). The ABF is an independent, nonprofit research organization dedicated to advancing justice through rigorous research on the law, legal practices, and the law's impact on our society. I have read with great interest the recently publicized draft of the Legal Services Corporation's Strategic Plan for 2012-2016. I write in response to the request for public comment.

I affirm and applaud the LSC's three strategic goals of "maximiz[ing] the availability, quality and effectiveness of the civil legal services that its grantees provide"; "becom[ing] a leading voice for civil legal services for poor Americans"; and "achiev[ing] the highest standards of fiscal responsibility both for itself and its grantees." I was particularly pleased to see the emphasis on empirical research in Initiatives One and Two of the first strategic goal.

As the draft Strategic Plan rightly observes, the use of public money, particularly in such austere times, must be guided by not only the strictest standards of ethics and accountability, but also by a deep and solid understanding of what practices of outreach and delivery are effective and efficient for the diverse groups in the client population. In such a context, as the draft Strategic Plan suggests, the adoption of specific practices as "best practices" must be subject to validation by evidence that speaks to the issues of effectiveness, efficiency, and accessibility that are central to providing access to justice for vulnerable people. I applaud this.

The activities described in the draft Strategic Plan will be beneficial far beyond the Legal Services Corporation, LSC grantees, and these grantees' clients. The LSC is the single largest funder of civil legal aid, with grantees in every state, and a central stakeholder in broader access to justice efforts that include courts, administrative tribunals, non-legal nonprofit organizations, law school clinics, bar associations, researchers, and agencies of local, state and federal government. The LSC's work as described in the strategic plan will provide a powerful model of good practices for other stakeholders.

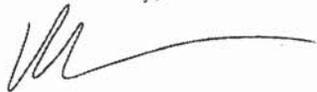
The tremendous potential influence of the activities described in the LSC's draft Strategic Plan necessitates that the research activities be both independent and comprehensive. If research on effectiveness, efficiency, and need is to be useful both practically and symbolically, the research must be and be seen to be independent from the messaging activities of the LSC and its grantees. There are many ways in which this independence might be secured; I do not make specific suggestions as to one means or another. I wish only to emphasize that good empirical research on questions of effectiveness, efficiency, quality, and accessibility can be produced only when pursued with the best standards of social scientific inquiry. These standards encompass a wide range of methods, from surveys to interviews to courtroom observation to case reviews to experiments; what these standards share is a fidelity to facts, even when such facts are inconvenient or contravene received wisdom and common opinion. Research efforts that are independent of the work of messaging are essential to producing good knowledge on which to base truly best practices.

Second, research efforts must be multi-method and wide-ranging, incorporating not only efforts to evaluate specific programs or services but also efforts to develop a broader understanding of the contexts in which people do or do not have access to justice. A large body of extant work can inform these research efforts. Scholars have been studying legal professions, legal aid and access to justice for over 60 years. This work should be reviewed both for its insights and to prevent spending scarce research dollars on efforts that merely "re-invent the wheel." At the same, we do confront enormous knowledge gaps.

Compared to other major social institutions such as education, labor markets, health care, and criminal justice, we know comparatively little about civil justice in the United States. For example, to inform our understanding of criminal justice we have censuses and surveys of correctional and public safety facilities and staff, national victimization surveys, and the FBI's Uniform Crime Reports. On the civil side, by comparison, we have little information about public contact with events that might lead to civil legal action or about facilities and staff that may assist members of the public when they encounter these events. Similarly, while we have studies of legal need, we have little understanding of the precipitating events that give rise to situations in which legal services might be impactful interventions or of the mechanisms through which people learn to think of particular situations as those for which law might provide remedies. We also have limited information about how the legal services that people consume are actually produced, funded, and priced, and little conceptual work that could inform a comparative analysis of different institutional arrangements for producing and delivering services. This kind of knowledge is essential for understanding and responding to the access to justice challenges that poor and other Americans face today.

I commend the Legal Services Corporation for the hard work and vision exemplified in its Strategic Plan, and I stand ready to support the LSC in its efforts to achieve these important goals. If there are any questions about these comments, or if there is information or assistance I can provide, please do not hesitate to contact me.

Yours sincerely,



Rebecca L. Sandefur
Assistant Professor of Sociology and Law, University of Illinois at Urbana-Champaign
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Richard Sloane

From: Michael O'Connor <moconnor@pslegal.org>
Sent: Monday, July 09, 2012 3:29 PM
To: LSC Strategic Plan
Cc: Jim Sandman
Subject: comments on LSC Strategic Plan
Attachments: Directors Letter to LSC July 9.docx

Attached please find comments submitted jointly by the Midwest Project Directors association. Thank you for the opportunity to review and comment on the draft strategic plan. Sincerely-

Mike

Michael T. O'Connor
Executive Director
Prairie State Legal Services
815-965-2134
Direct Line 815-668-4433

www.pslegal.org



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JEFF HAMAKER, *DIRECTOR OF COMMUNITY SUPPORT*

July 9, 2012

Mr. James Sandman, President
Legal Services Corporation
3333 K Street, N.W., 3rd Floor
Washington, D.C. 2007

RE: LSC Draft Strategic Plan, Midwest Directors' Response

Dear Jim:

The Midwest Project Directors group (MW Directors) is a group of Executive Directors of 21 LSC-funded legal aid programs throughout the plains states, the Midwest, and nearby regions. The group meets regularly over the phone and in-person to share successful strategies, respond to common challenges, and discuss a variety of issues related to managing free civil legal services programs. The MW Directors read and discussed the Draft LSC Strategic Plan (Plan). The MW Directors have decided to file a response on those areas of concern for which a consensus among the members was reached. The MW Directors support the Plan's acknowledgement of a broad-based reduction in funding that is concurrent with a significant increase in legal needs of the poor. The MW Directors similarly concur with the Plan's initiative to "[i]dentify, promote, and spread best practices in meeting the civil legal needs of the poor." However, we share significant concerns with the Plan's statements regarding changes in program performance evaluation, national quantitative metrics, and access issues in rural areas. Our concerns are described below. We hope that you will consider incorporating these concerns as you move forward on a final strategic plan for LSC.

I. A national system of quantitative metrics should not be considered

As part of "Initiative Two – Implement[ing] a new performance management system," the Plan, page 6, calls for "meaningful performance standards and metrics" with "quantitative metrics" designed to measure "outcome metrics," "efficiency metrics" and "needs assessment metrics." While the MW Directors agree with the Plan's call to "ensur[e] high quality legal services," we are concerned that the push toward a national system of quantitative metrics will, in fact, result in a "one-size-fits-all" approach that cuts against local priority-setting and local control.

OFFICES IN BLOOMINGTON, GALESBURG, JOLIET, KANKAKEE, MCHENRY, OTTAWA, PEORIA, ST. CHARLES, ROCK ISLAND, ROCKFORD, WAUKEGAN AND WHEATON



There are 135 LSC-funded programs. Each program's service area contains a mix of demographics, economies, and resultant civil legal needs that is unique to that service area. As a result, the LSC Act and implementing regulations, and the 2006 Performance Criteria, have encouraged programs to perform needs assessments, set priorities, and engage in strategic planning in a manner that best serves the service area's client population given the resources available to the program.

It is the MW Directors' concern that implementing standard, quantitative metrics will deter this form of local control and priority-setting, resulting in a numbers game which will encourage a homogenization of legal services delivery throughout the country. Much like the well-intentioned, but ultimately disappointing, "No Child Left Behind" education law, we are concerned that quantitative metrics will be used to drive a preference for particular forms of legal services. Much as school instructors are forced to "teach to the test" to improve student scores and preserve funding, legal aid programs will re-align their priorities and service delivery models to perform well, compared to whatever metrics are established.

While the plan does contemplate that LSC will "collaborate with grantees" to develop these national standards, we think that, instead, LSC should invest resources in assisting programs to develop and implement *local standards* for evaluation based on local priority-setting and strategies. For example, assume Program A decides, through needs assessment, strategic planning, and priority setting, that its service area's poverty population's legal needs are best served through impact advocacy and major litigation. LSC should support and encourage Program A's efforts in evaluating the impact and outcomes from this approach. The same would be the case for Program B, which goes through the same type of process, but decides instead that a hotline/advice model would best serve its service area, with little or no extended representation afforded to local clients.

Indeed, we support the idea that effective impact evaluation must take place with both Program A and Program B. However, we do not see how standard, or national, quantitative metrics can actually do this. Moreover, we are concerned that national metrics would have a much easier time evaluating and measuring a nation of Program B's, and this would certainly not be an optimal result for effectively resolving the civil legal needs of the poor.

II. A monetary reward and penalty system based on merit would be ineffective and would adversely affect equal justice under law

The Plan, in Initiative Two, page 7, states:

- > Rewards for grantees exceeding a standard (e.g., a high percentile ranking on established quantitative metrics) might include:
 - * * *
 - Increased access to funds or projects generated through LSC's own advancement efforts; or,
 - Ability to compete for special grant programs that LSC may administer.

The Plan also describes "[c]orrective actions for grantees consistently falling below a minimum standard." The corrective actions listed do not expressly include the withholding of funds, and

this is a good thing. But LSC already has considerable authority to defund or reduce funding for programs under existing law and regulations, and we urge that those tools not be used in this context. What is apparent is that lower-performing grantees will *not* have increased access to funds or be able to compete for special grant programs. This is unfortunate, as lower-performing grantees may be those most in need of additional funds to correct their problems.

We urge that LSC not adopt a merit-based system of monetary rewards and penalties, for the following reasons: First, financial rewards are not what drive us in legal services. Our motivation is to be able to say “yes” to more applicants for service, and to provide the highest-quality representation to those whom we are able to accept as clients. We want to do this for all of the people in our service areas, not just for a smaller group of clients that can be funded by a special grant. We will strive for this ability to serve more people with high-quality representation whether or not we have access to funds or projects generated through LSC’s own advancement efforts and whether or not we have the ability to compete for special grant programs that LSC may administer.

Any significant LSC reduction in Basic Field funding to aggregate a sizable “rewards funding” line item would work against equal justice under law. When Basic Field funding is substantially reduced, the poor people in the service territory of a grantee that LSC determines is “consistently falling below a minimum standard” will have fewer dollars allocated to them (dollars per poor person) in order that “rewards for grantees exceeding a standard” will be greater. Thus, clients of “weak” grantees will get less when those grantees need more, and clients of “strong” grantees will get more. This is unequal justice. While it is good to see that LSC recognizes in its draft strategic plan that “[p]erformance measures cannot alter the legislatively-determined funding formula that sets the level of Basic Field grants,” that formula operates on fewer dollars whenever more dollars are set aside for “funds or projects” or “special grant programs.”

Also, to the extent rewards are tied to special projects or grants, our local control and local determination of need are undermined.

Finally, it is alarming to see on page seven the example of a standard phrased in quantitative terms, “. . . e.g., a high percentile ranking on established quantitative metrics,” rather than qualitative terms, such as high quality brief writing or oral argument. This appears to be heading toward a quota system, a stressing of numbers over quality. Such an emphasis results in legal services which are a mile wide and an inch deep, and a second class system of justice for poor people.

III. Given the national investment in the LSC Performance Criteria, and the successful experience in using them to improve quality, the Performance Criteria should be retained

The Strategic Plan speaks, on pages 6 and 7, of a “new performance management system,” with “meaningful performance standards and metrics,” once “clear, evidence-based standards of performance are established.” There is no mention of the LSC Performance Criteria. Are these to be retained or jettisoned? To jettison them would be terribly wasteful, inefficient, and disruptive.

The LSC Performance Criteria were first promulgated in around 1994 or 1995, and significantly revised in 2006. They proved to be quite helpful, and were applied in many peer reviews, not just by LSC, but by IOLTA boards in their own evaluations of grantees. Many of us have applied the Performance Criteria internally. LSC has conducted panel discussions on the Performance Criteria at NLADA and other conferences. The LSC grant application process utilizes the Performance Criteria. OPP has applied them in its visits, which were the first LSC visits to take a serious look at program quality, not just program compliance.

The legal services community has invested significant resources in learning the Performance Criteria, including the “Indicators” and the “Areas of Inquiry.” After we learned them, we invested time and resources in applying them. Performance Area Three has been especially important to us, looking as it does at the quality of lawyering we provide to our clients. This Performance Area incorporates the ABA Standards for the Provision of Civil Legal Aid, particularly Sections 2, 3, 4, 6, and 7 of those Standards.

Now all of this experience may be tossed aside, including the ABA Standards, in favor of some “quantitative metrics” that can’t distinguish a good appellate brief from a bad one? This would be a tremendous waste of an entire body of experience, a rejection of governing standards that work and that pay attention to the quality of legal representation. The LSC Performance Criteria should not be eliminated in favor of metrics.

If there are some people, within LSC or elsewhere, who believe that the Performance Criteria contain imperfections, then time should be spent in eliminating those imperfections and improving the Criteria. They should not just be dropped, in favor of a new set of standards, especially a set of metrics that measure only the “identified benefits for individual clients, as well as other social benefits and governmental savings,” the LSC cost-per-case, or congruity with “needs assessment metrics.”

IV. Legal Services Programs are *not* abandoning the rural poor

Page 2 of the Plan includes the statement: “Twenty-four programs reported that they expect to close offices in 2012. Because many of these closures will occur in rural areas, eligible clients will lose the ability to access lawyers within their communities. *This will mean effectively no access to legal assistance for an increasing number of America’s rural poor*” (emphasis added).

This statement gives the mistaken impression that LSC-funded programs are abandoning the rural poor, and that the absence of an office in a community is synonymous with the absence of access and service. This is certainly not true, as rural programs use a variety of approaches to provide both access and service in more remote areas.

We think it would be more helpful to include a statement noting that the funding reductions affect all the populations we serve, and that LSC is committed to doing everything in its power to increase funding. Further, we think the Plan should emphasize that we continue to serve clients in rural areas even if the nearest office closes. Following is language that you may wish to substitute:

“The need for legal services on critical issues far exceeds the capacity of legal aid programs to provide assistance. The recent decreases in funding have drastically reduced access to legal aid across all demographics, rural and urban, minority and majority, young and old. Twenty-four programs reported that they expect to close offices in 2012. Many of these closures will occur in rural areas. Rural programs strive to provide equity of service throughout their counties through hotlines, satellite interview sites, courthouse help desks, and private attorneys. But there is no doubt that the increased distances between potential clients and legal aid offices present yet another barrier to effectively serving these isolated populations.”

V. Conclusion

The MW Directors share a passion for high-quality legal representation for the poor. We have struggled with increased need, an extended economic recession, and declining resources. While we do agree that evaluation of our programs and services is essential for maintaining and improving the services we provide to people who have nowhere else to turn, we hope that LSC will rethink those sections of its Draft Strategic Plan which seem to preference national quantitative standards over actual improvement of legal services.

Respectfully submitted,

Michael O’Connor
Executive Director of Prairie State Legal Services
Chair of Midwest Project Directors Group

On behalf of

Douglas Cummings, East River Legal Services
Cheryl Three Stars Valandra, Dakota Plains Legal Services
John Ebbott, Legal Action of Wisconsin
Rosemary Elbert, Wisconsin Judicare
Jim Fitzsimmons, Legal Services of North Dakota
Dan Glazier, Legal Services of Eastern Missouri
Dennis Groenenboom, Iowa Legal Aid
Marilyn Harp, Kansas Legal Services
Douglas Kays, Legal Services of Southern Missouri
Cathy Haukedahl, Mid-Minnesota Legal Assistance
Jean Lastine, Central Minnesota Legal Services
Gregg Lombardi, Legal Aid of Western Missouri
David Lund, Legal Aid Services of Northeast Minnesota
Susan Lutton, Mid-Missouri Legal Services
Norman Metzger, Indiana Legal Services

Jessie Nicholson, Southern Minnesota Regional Legal Services
Dave Pantos, Legal Aid of Nebraska
Mary Schneider, Legal Services of Northwest Minnesota
Diana White, Legal Assistance Foundation of Metropolitan Chicago
Lois Wood, Land of Lincoln Legal Assistance

Richard Sloane

From: Richard Zorza <richard@zorza.net>
Sent: Tuesday, July 10, 2012 9:49 AM
To: Richard Sloane
Cc: Jim Sandman
Subject: Comments on Draft Strategic Plan
Attachments: comments.DOC; ATT00001.htm

Please find attached.

Richard Zorza
10450 Lottsford Rd.
Mitchelville MD 20721
Landline: 202-362-3615, Mobile 202-549-1128
richard@zorza.net

July 10, 2011

Richard L. Sloane
Chief of Staff and Special Assistant to the President, Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

Dear Sir:

The following are my comments on the Proposed Strategic Plan for the Legal Services Corporation. While I have a number of consulting and institutional relationships, I am submitting these comments on my own behalf.

In summary, I believe that the overall directions envisioned by the Proposed Strategic Plan are excellent. I incorporate by reference my blog post on the subject, which appears at <http://accesstojustice.net/2012/06/19/draft-lsc-strategic-plan-available-comments-requested-by-july-11/>.

In particular, let me repeat from the blog the following specific items that I highlighted for my readers as most important for the future, and which I urge should be retained in the final version of the Plan.

1. The introductory language grounds LSC in a broad access definition: "*The Legal Services Corporation (LSC) was founded on a shared American ideal: access to justice regardless of one's economic status.*" (p. 1).
2. Prominence is given to technology and informational services: "*promoting the development and implementation of technologies that maximize the availability of legal information and assistance.*" (p. 3).
3. There is a general recognition the efficiency must be increased through innovation: "*LSC's approach to improving quality must be focused on promoting innovation that accomplishes more with fewer resources.*" (p. 3)
4. The commitment to work with other federal agencies and private foundations to broaden the funding base is a major and overdue shift in direction. (p. 3).
5. The commitment to fiscal responsibility is critical for credibility. (p.4).
6. The Best Practices component is dynamic and seen as the basis for collaboration: "*This will also include the identification of those federal agencies that are most involved in the types of legal issues that LSC grantees handle for their clients so as to facilitate coordination with these agencies to better streamline responsiveness to the needs of clients*" (p. 5).
7. The commitment to performance measures is revolutionary. It includes: "*Outcome metric(s): Evaluating how a grantee organization's delivered legal services translate into identified benefits for individual clients, as well as other societal benefits and governmental savings.*"

Efficiency metric(s): Evaluating the cost-effectiveness of a grantee organization's activities by measuring how invested federal grant dollars translate into an amount of legal services delivered.

Needs Assessment metric(s): Ensuring that grantees effectively assess the needs of eligible clients in their service areas, establish priorities reflecting such assessment in a manner consistent with the Legal Services Corporation Act and LSC regulations, and evaluate their effectiveness in meeting those priorities." (p. 6).

8. There's a commitment to online data collection to minimize the burden on grantees. (p.7)
9. For the first time ever, there is a willingness to provide true performance incentives, even within the context of legislative field grant allocation formula. *"When clear, evidence-based standards of performance are established, LSC will seek to provide performance incentives to grantees outside these funding formulas."* (p.7)
10. Specific rewards are suggested: *"LSC certification as a top-performing organization; Invitation to special LSC recognition programs; Increased access to funds or projects generated through LSC's own advancement efforts; Ability to compete for special grant programs that LSC may administer."* (p. 7.) Note particularly that last one. As I see it, such programs might be funded sources other than Congress.
11. Corrective possibilities are suggested for programs that are identified as sub-par: *A special review by LSC or peers; Required professional development activities (such as training); Implementation of specific quality or efficiency processes; Enhanced program oversight requirements; Suggested changes in staffing or program focus; or, Other actions permitted by applicable law and corresponding regulations.* (p.7)
12. Various forms of training and support, most notably, as far as I am concerned, training for boards, executive director mentoring, and collaboration tools. (pp. 8-9)
13. The long-overdue establishment of a communications strategy, including perhaps most crucially, the making of a business case for funding: *"Gather and analyze broad, nationwide data on the results achieved in civil legal services cases as the starting point for a strong economic analysis; Conduct research on the best methods for quantifying the cost savings realized by the outcomes achieved; and, Create a research-backed case for the investment in civil legal services that shows the value of current expenditures and reasonable estimates of the public value that would be created by increased funding – a projected marginal value for legal aid dollars."* (p. 11).
14. Understanding that efforts must be made to influence the overall philanthropic community. (p.11).
15. An Internal Advancement Office to support fundraising for: *"Research projects; Fellowships created for new lawyers and senior lawyers to serve in legal services programs; Create appropriate public service announcements and public education materials; Launch of an honorary auxiliary board; launch of a national alumni association; and, Other pilot projects and initiatives."* (p.12).
16. Risk Assessment. As part of broader management initiatives, a coordinated effort to identify areas of risk in financial management and controls for the field. (p .15).

Obviously I particularly hope that these aspects of the Draft Strategic Plan survive the comment and redrafting process.

In addition, please permit me to make a number of suggestions designed to strengthen and add additional force to the elements of the Plan, and particularly to enhance the chances of its successful implementation.

1. Make a commitment to develop timelines. This is an ambitious Plan, and rightly so. The creation of timelines, particularly in potentially controversial areas such as the use of outcome measures for incentives and remedial actions, would make it much harder for inertia to prevent the implementation of these important ideas. Moreover, having a timeline would help ensure the momentum remained with the implementation of the Plan, even in possible times of unavoidable future leadership transition.
2. Make More Explicit LSC's Commitment to Creating Leadership Institutions on Issues of Access to Justice. The Plan is excellent in its articulation of the need for LSC to become a "leading voice" in this area. I make more explicit that LSC would encourage the organizations with which it partners in this work to create stronger integrated national leadership roles and groupings in this area. I have personally urged moving towards the creation of a national access to justice Commission or equivalent body, modeled on the bi-partisan, multi-constituency model that has been so successful in so many states. While I understand the political complexities, I believe that they can and must be overcome, and that LSC can show true leadership in helping to move such an idea forward.
3. Expand Discussion of Staffing issues. I would encourage inclusion of additional discussion of staffing realignment, particularly at the most senior level, to "bake in" these changes. In particular I believe that there is need for a Chief Information Officer to take leadership of the information strategy.
4. Consider Use of Refunding Process to Incentivize Best Practices. It has been my experience that putting grantees on notice of LSC's intent to request information on, and consider effectiveness in, particular aspects of their activities, has a significant impact on grantee planning processes long before the actual refunding application is due. The competition process can be used to underline the importance of compliance with expectations such as those relating to Best Practices, outcome measures and program Board development. I draw attention to the OMB circular on evidence based practices, blogged about here: <http://accesstojustice.net/2012/05/31/nyt-blog-on-omb-memo-the-dawn-of-the-evidence-based-budget-implications-and-ideas/>.

Thank you for the opportunity to comment. I do, of course, stand ready to help in any way that I can with these excellent changes.

Sincerely,

Richard Zorza, Esq.

Richard Sloane

From: webmaster@lsc.gov on behalf of LSC - Legal Services Corporation: America's Partner for Equal Justice <webmaster@lsc.gov>
Sent: Tuesday, July 10, 2012 12:59 PM
To: LSC Strategic Plan
Subject: Form submission from: Comment Submission Form for LSC Board of Director's draft Strategic Plan for 2012-2016

Submitted on Tue, 07/10/2012 - 12:59

Submitted by anonymous user: [12.134.7.94] Submitted values are:

Your name: Gregg Lombardi

Your e-mail address: glombardi@lawmo.org Your phone number: (816)474-1413 x224 Your comments:

The Executive Directors of the Midwestern LSC-funded programs (the "Midwest Project Directors' Group" or the "Group") have provided comments on the draft LSC Strategic Plan. I fully support the comments of the Group and ask that you implement the changes they have suggested in full.

I think that those changes would make the strong strategic plan that LSC has developed substantially better.

I am writing to concur with the Group on one point and to applaud LSC's proposed plan on another.

First the concurrence—I share the Midwest Project Directors' Group's concern about providing special additional funding for programs that LSC decides have developed best practices. In addition to the reasons cited by the Group, I would note that the draft strategic plan incorrectly assumes that LSC programs do not already have financial incentives for developing best practices.

The LSC programs are already fighting, on a daily basis, for revenue in a highly competitive market of funding opportunities. I do not have the exact statistics, but I am confident that the vast majority of LSC programs receive less than half of their funding from LSC. LSC's basic field funding accounts for less than 20% of our program's funding and, excluding donations from private individuals and law firms, our program has more than 40 different funding sources. I believe and assume that this is not unusual.

Each of these funding sources has its own vision of what best practice we should be implementing and provides us funding or denies the funding based on its judgment as to how well we are achieving the outcomes that it wants achieved in the way that it wants them achieved. Although we are tremendously grateful for this funding, it is generally much easier to secure funding for some areas of our practice (for example, domestic violence prevention) than others (for example, assisting homeless people with mental health problems finding housing).

I would note that, of all of our funders, LSC is the only one that insists that we comply with their in all or our cases, regardless of whether the work is funded by LSC or another source.

The outcomes that are funded by these other sources may not be the highest priorities for us, as we have determined through our respective needs assessment process. For example, we have funding from the IRS to run a low-income taxpayer clinic, which has never been a top priority for us, but we seek and accept the funding anyway, because it is consistent with our mission and helps our low-income clients.

The tremendous advantage of LSC funding is that it is largely discretionary.

So, we can use the funding to do the work that most effectively meets the greatest needs of our clients. Presumably, this is why LSC insists that we do local needs assessments, because the needs of each service area are unique and using LSC funds to meet the greatest needs of a local service area is the highest and best use of LSC funds.

Diverting some of the available LSC funding to reward best practices, determined by LSC—even if they are determined in consultation with some LSC-funded programs—would necessarily take funding away from the local programs’ efforts to meet the greatest needs that they have determined exist in their service area. So, I urge you not to use any federal funding to provide incentives to develop best practices for LSC funded programs.

If LSC is able to secure funding independent of congressional funding to support best practices, that would be a different story. Such funding, which I’ll refer to as “non-Congressional, best practices funding”, would not result in a net decrease in discretionary funding that the individual programs receive and, therefore, would not interfere with the programs’ ability to meet the greatest needs of their clients, as they have identified them.

Even if LSC is able to secure such funding, however, I would respectfully submit that the funding should not be used to reward programs that are developing best practices. The programs that are developing best practices are already doing relatively well in the competitive market for funding (noting that all Legal Aid programs are grossly under-funded and only meet a small percentage of the critical, civil legal needs of the people who should be their clients).

I think it would make more sense to use any such additional funding to fund programs so they can implement best practices that have already been developed by another program. So, for example, if one program develops a tremendously effective on-line intake system, there may be fifty programs that would be eager to implement the program but have no funding to do so.

The best use of any non-Congressional, best practices funding would be to provide grants to programs that wanted to implement that best practice. This would have the benefit of being both highly cost-effective and assisting the programs that are likely to need the help the most.

Second, I want to applaud LSC for making it a priority to “conduct research on the best methods for quantifying the cost savings realized by the outcomes achieved” by LSC funded programs.

There are many practice areas and projects that the Legal Aid programs are involved in that confer a tremendous benefit on not only the clients we serve, but the communities that they live in. Reducing domestic violence and getting housing for the homeless, for example, have major, quantifiable benefits. If LSC can find non-Congressional funding for research that will quantify these benefits, it would empower the LSC programs to greatly increase their funding.

For example, our program has always handled Medicaid appeals for patients at the local, government-funded hospital. Several years ago, we secured funding to have a paralegal on site at the hospital to make sure that the hospital staff were sending all the viable appeals cases of their patients to Legal Aid. As part of this project, the hospital agreed to track the revenue that our Medicaid appeals work generates for the hospital. When the hospital saw how much money we were generating, they agreed to fund the project themselves and greatly increased the number of referrals. Now the hospital pays our program over \$700,000 a year to do this important work, which is central to our mission. The project generates more than \$2 million per year for the hospital and gets more than 200 permanently and totally disabled patients per year onto Medicaid.

Most of the economic benefits we secure are not nearly as easy to quantify as our Medicaid Appeals work. We need the research to show the benefit of work such as domestic violence prevention and finding housing for people who are homeless. Research that will be respected and credible is expensive and the individual LSC funded programs, on their own, do not have the funding to pay for it. If LSC can secure funding for research from national foundations, however, the impact could be tremendous.

Research showing the economic benefit of the work we do may be useful in seeking Congressional funding for our work. The greatest benefit, however, would be in helping LSC programs obtain state and local government funding and funding from foundations and other private donors. The potential growth in funding from these sources is gigantic and without research demonstrating the benefits of our work, this funding remains unattainable for us.

I appreciate the opportunity to comment on the LSC's draft Strategic Plan and hope that the comments are helpful.

--Gregg Lombardi
Executive Director
Legal Aid of Western Missouri

The results of this submission may be viewed at:
<http://www.lsc.gov/node/2233/submission/2924>

Richard Sloane

From: webmaster@lsc.gov on behalf of LSC - Legal Services Corporation: America's Partner for Equal Justice <webmaster@lsc.gov>
Sent: Tuesday, July 10, 2012 2:51 PM
To: LSC Strategic Plan
Subject: Form submission from: Comment Submission Form for LSC Board of Director's draft Strategic Plan for 2012-2016

Submitted on Tue, 07/10/2012 - 14:50

Submitted by anonymous user: [69.211.146.201] Submitted values are:

Your name: Colleen Cotter

Your e-mail address: cmcotter@lasclev.org Your phone number: 216-861-5273 Your comments:

Overall Comment:

I am surprised that increasing the Congressional appropriation is not listed as a goal. Clearly a number of these, perhaps all, can be helpful in that endeavor, but I would think it would actually be a stated goal. If its too obvious to be a goal in the strategic plan, then perhaps a statement at the beginning that that is one of LSC's primary purposes, and all of these goals will help in that endeavor.

- Page 8 – initiative 3: A lot of what is described here is currently being done, at least in part, by other organizations. I suggest an acknowledgement of that, and perhaps a statement that LSC will fill gaps in or augment what exists, and/or collaborate where appropriate?

- Page 9 – “matchmaking” idea: I would not limit that to matching a junior and with a senior ED. Instead, make it more broad, to match 2 EDs who can learn from each other?

- Page 14: the italicized paragraph after “ensure superior fiscal management”. I suggest changing the sentence that refers to “will be able to aid more of those in need” to include something about effective assistance. As written, this can be taken to mean that LSC cares only about the number of people served. Clearly, based on the prior discussion about outcomes and the impact of LSC grantees’ work, LSC does care about effective services to clients, in addition to efficient services to clients.

That should be reflected here.

I also have a few minor wording comments:

- I don't think it's appropriate to refer to LSC funded organizations as "programs". This is a term left over from decades ago when the organizations were seen as programs of a national entity. We have evolved from that, and our language should evolve also. Each LSC grantee is an independent organization, not a program. I suggest changing that throughout the document.

- Page 1 - I suggest adding “other federal funding” to the list of funding sources.

- Page 2 - there is a reference to LSC grantees reporting a 2% decrease in funding in 2011. That is a misleading statement. While that may be the case in 2011, the reality is that many organizations have seen a 25 - 50% decrease since 2007 because of IOLTA decreases. I would either take that sentence out, or change the statement to reflect the longer term decrease. As written it makes one wonder what the big deal is.

- Page 3 – paragraph numbered (3) – the reference to pro bono as “beyond LSC’s grantees” is a bit misleading. Many pro bono programs are an important part of LSC grantees operations. Those organizations which operate high quality pro bono programs see the pro bono resources as part of their larger organization, albeit a leverage of our resources. Perhaps inserting leverage in this section might be more accurate?

The results of this submission may be viewed at:
<http://www.lsc.gov/node/2233/submission/2926>

Richard Sloane

From: Brooks, Terry <Terry.Brooks@americanbar.org>
Sent: Tuesday, July 10, 2012 5:27 PM
To: Richard Sloane
Cc: Robert Stein
Subject: ABA-Standing Committee on Legal Aid & Indigent Defendants Comments on LSC Draft Strategic Plan
Attachments: SCLAID Comments on LSC Strategic Plan 7-11-2012.pdf

Dear Mr. Sloane:

Attached please find comments on the LSC Draft Strategic Plan from the ABA Standing Committee on Legal Aid & Indigent Defendants. Please let me know if you have any questions.

Terry Brooks

Director, Division for Legal Services
Chief Counsel, Standing Committee on Legal Aid & Indigent Defendants
American Bar Association
321 N. Clark Street, FL19
Chicago, IL 60654
Office: 312-988-5747
Mobile: 312-799-0498
terry.brooks@americanbar.org
www.americanbar.org
www.ambar.org/sclaid

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4945 Brandywine Street, NW
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College Park, MD

Pamela Enslin
Kalamazoo, MI

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Louisville, KY

Lillian Moy
Albany, NY

Robert Parks
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Hon. Vanessa Ruiz
Washington, DC

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Seattle, WA

E. Jane Taylor
Columbus, OH

Robert Weeks
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Tori Jo Wible
312-988-5753
tori.wible@americanbar.org

July 11, 2012

Richard L. Sloane, Chief of Staff
and Special Assistant to the President
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

Via email: sloaner@lsc.gov

Re: Legal Services Corporation Draft Strategic Plan 2012-16

Dear Mr. Sloane:

I write to submit the comments of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) in response to the Legal Services Corporation's June 8, 2012 request for comments on the most recent draft of the LSC Strategic Plan 2012-2016. As indicated in previous correspondence, SCLAID supports the LSC's strategic planning process.

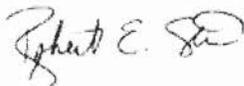
With respect to the current draft plan, SCLAID wishes to emphasize the complexities involved in developing quantitative metrics, as discussed on page 6 of the draft plan. We strongly support, as the first and primary metric, assessment of outcomes achieved, although local variation in approaches to measurement are likely to be necessary. Outcomes are the crucial measure of the success of a legal aid program. The effective use of resources to maximize the results achieved for clients, and the overall impact on the community, is of utmost importance.

In our opinion, it is much more difficult to measure the efficiency of the use of funds, as discussed in the second bullet point under "Quantitative metrics." Efficiency must necessarily take into account both the number of results achieved, and the broad impact of those results on the community at large, including people who are eligible for a legal aid program's assistance but who may not have yet applied for such assistance. This assessment must go beyond the "amount of legal services delivered," and also take into account the contributions that may exceed the specific benefits realized by individual clients of the program. A result achieved for a particular individual client that sets an important precedent or establishes an important legal principle which prevents future damage or harm for thousands of other eligible individuals is far more "efficient" than pursuit of tens or even hundreds of individual lawsuits.

We recognize that this is not an easy calculus, and that it is appropriate for recipients of LSC funding to be accountable to LSC, and for LSC to be accountable to Congress, through objective metrics. At the same time, we urge that LSC be cautious in developing metrics that might appear at first blush to reward performance that involves large amounts of mundane legal work to the exclusion of a smaller quantity of more resource-intensive legal advocacy that achieves results with much broader and more lasting impact.

Thank you for the opportunity to comment on the draft LSC Strategic Plan.

Sincerely,



Robert E. Stein
Chair

Cc: Wm. T. (Bill) Robinson, III, President, American Bar Association
Thomas Susman, Director, ABA Government Affairs Office

Richard Sloane

From: James Greiner <jgreiner@law.harvard.edu>
Sent: Tuesday, July 10, 2012 9:37 PM
To: Richard Sloane
Subject: Comment letter
Attachments: LSCLetter20120710.pdf

Dear Mr. Sloane:

Please find attached a letter in response to LSC's request for comments on its draft strategic plan. Many thanks.

Jim Greiner
Professor of Law
Harvard Law School
Griswold 504
1563 Massachusetts Avenue
Cambridge, MA 02138
ph: (617) 496-4643
fx: (617) 495-4299
http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1300384



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jgreiner@law.harvard.edu

July 10, 2012

Mr. Richard L. Sloane
Chief of Staff and Special Assistant to the President
Legal Services Corporation
3333 K Street NW.
Washington, DC 20007

Via email to sloaner@lsc.gov

Dear Mr. Sloane:

I write in response to the request for comment on the Legal Service Corporation (“LSC”) Strategic Plan for 2012-2016. I have been fortunate enough to see an advanced copy of the letter submitted by Rebecca L. Sandefur, Assistant Professor of Sociology and Law, University of Illinois at Urbana-Champaign and Senior Research Social Scientist, American Bar Foundation. I agree with and support all of the statements Professor Sandefur makes in her letter. Hoping to avoid repetition, I will limit my comments to two points.

First, LSC’s Strategic Plan is ambitious. Implementing it will require strong leadership, but it will also require information and knowledge that only strong research can provide. I have recently been fortunate enough to participate in meetings, conferences, working groups, and informal conversations in which a discussion of research on access to justice issues has taken place. At such gatherings, I have attempted to facilitate discussion by asking the following question of those in the field: “What do you not know that you wish you knew?”. There has been no shortage of answers to this question, suggesting that the need for research is large. We in a growing community of researchers interested in access to justice stand ready to dedicate our time and energy to satisfying this need, but given the startlingly limited nature of the information we presently possess about the civil justice system in the United States, a sustained effort will be necessary. That sustained effort cannot take place without LSC’s commitment and leadership.

Second, my own personal experience has been that the information and knowledge produced by strong research methodology will not always be popular. If it is to be effective, LSC’s commitment to research must include a willingness to reexamine notions popular with its grantee agencies. Evaluation of best practices, assessments of need, and other critical

programmatic efforts must come from researchers who are not beholden to LSC or its grantees. Research methodologies can and should vary according to the purpose of the research and the nature of the setting under study. A commitment to researcher independence should not vary. If, by 2016, LSC has been unable to persuade its constituents and grantees to engage with researchers that they cannot control, if decisions of what research to pursue are driven by fear of misuse of the resulting information by those opposed to LSC's purpose and existence, or if habit and inertia are allowed to masquerade as choice, then the Strategic Plan will become another disappointing missed opportunity. I trust that will not occur.

My thanks to all involved for an excellent, and inspiring, draft Strategic Plan.

Sincerely,

/s/

D. James Greiner

Richard Sloane

From: Steven Eppler-Epstein <SEppler-Epstein@connlegalservices.org>
Sent: Wednesday, July 11, 2012 2:09 PM
To: Richard Sloane
Cc: ..Project Directors; Deborah Witkin; Astrid Lebron
Subject: Connecticut comments on LSC Draft Strategic Plan
Attachments: Connecticut Comments on LSC Draft Strategic Plan (final).pdf

Dear Mr. Sloan,

Please accept the submission of the attached comments from the coalition of LSC- and non-LSC-funded legal services programs in Connecticut.

Thank you.

Sincerely,

Steve Eppler-Epstein

Steven D. Eppler-Epstein
Executive Director
Connecticut Legal Services
62 Washington St., Middletown, CT 06457
SEppler-Epstein@ConnLegalServices.org

Connecticut Legal Services is committed to providing access to justice as a means of improving the lives of low-income people.

This transmittal is intended for a particular addressee(s). It may constitute a confidential and privileged attorney-client communication or attorney work product. If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying, distribution, or dissemination is strictly prohibited. If you suspect that you have received this transmittal in error, please notify me immediately at (860) 344-0447, or by email by replying to the sender, and delete the transmittal and any attachments from your inbox and data storage systems. Thank you.



**Connecticut
Legal
Services, Inc.**
62 Washington Street.
Middletown, CT 06457
(860) 344-0447

BY EMAIL

July 11, 2012

Richard L. Sloane
Chief of Staff and Special Assistant to the President
Legal Services Corporation
3333 K St., NW
Washington, D.C. 20007

**Greater
Hartford
Legal
Aid, Inc.**
999 Asylum Avenue, 3rd floor
Hartford, CT 06105-2465
(860) 541-5000

Dear Mr. Sloane:

We write to comment on the draft Strategic Plan for the Legal Services Corporation, notice of which was published in the Federal Register.

**Legal
Assistance
Resource
Center of
Connecticut, Inc.**
44 Capitol Avenue, Suite 301
Hartford, CT 06106
(860) 278-5688

We are the principal legal aid programs for the state of Connecticut, including both one LSC-funded and numerous non-LSC-funded programs. We join in thanking the Corporation for its ongoing efforts on behalf of the national effort to provide civil legal aid to the low-income population that is so dramatically underserved and so much in need of help.

**New
Haven
Legal
Assistance
Association, Inc.**
426 State Street
New Haven, CT 06510
(203) 946-4811

We applaud the Corporation for engaging in strategic planning, and we support much of the draft plan. In particular,

- we support the three primary goals as stated;
- we support the first initiative (promoting best practices) and third initiative (supporting program enhancement) identified towards the first goal of maximization of services;
- we support the second goal (serving as a leading voice for access to justice) and its initiatives, as long as the efforts to secure additional funds does not compete with the fundraising efforts of local legal services programs; and
- we support the third goal of superior LSC fiscal management.

**Statewide
Legal
Services, Inc.**
425 State Street
Middletown, CT 06457
(860) 344-8096

We would urge changes in two areas of the strategic plan:

First, the plan should include a statement that LSC will lead efforts to close the Justice Gap that LSC has identified, and specifically that LSC will lead efforts to convince Congress and the Administration to fund LSC field programs at levels adequate to achieve access to justice for all low-income people in all states. The lack of such a statement suggests that LSC believes that increased federal funding is not a strategic goal; we cannot imagine that is LSC's position, as it would represent a major abdication of LSC's role.

Second, any effort to measure the efficiency of legal aid programs should take into account (among other factors) the difficulty of the cases undertaken, the potential impact of the cases, the difficulty of the client's circumstances, challenges posed by the legal decision-making environment and legal opposition, and the costs of operating in that geographic area. Otherwise, "efficiency" measures will simply point towards programs that pay their employees badly, programs in areas of the country with an inexpensive cost of living, or programs that mill cases with an eye to short-term quantity rather than long-term impact.

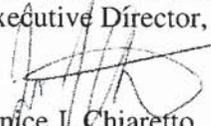
Also, any measurement effort should specifically recognize the types of work that are more difficult to measure, and recognize that although measurement is more difficult this does not mean the work may not be extremely important to low-income clients.

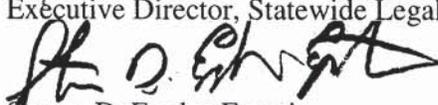
Again, thank you for all the work of the Legal Services Corporation, and your consideration of these comments.

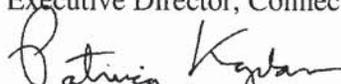
Sincerely,

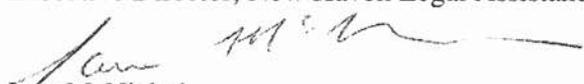
Branford D. Brown

Branford D. Brown
Executive Director, Greater Hartford Legal Aid


Janice J. Chiaretto
Executive Director, Statewide Legal Services


Steven D. Eppler-Epstein
Executive Director, Connecticut Legal Services


Patricia R. Kaplan
Executive Director, New Haven Legal Assistance Association


Jane McNichol
Executive Director, Legal Assistance Resource Center of Connecticut

Richard Sloane

From: Wayne Moore <wmoore95@yahoo.com>
Sent: Wednesday, July 11, 2012 4:48 PM
To: Richard Sloane
Cc: Wayne Moore
Subject: Comments on LSC's strategic plan
Attachments: law review complete14.doc; Bio.doc; LSC strategic plan comments.docx

Hi Richard. Attached are my comments about the draft LSC strategic plan. I am also attaching a short bio so that you know a bit about my background. My comments often refer to an article I wrote which is also attached and can be posted on your website if you like. I can be reached at 202 997-9375 and wmoore95@yahoo.com. Thanks for the opportunity to comment.

Comments on the draft LSC Strategic Plan for 2012 to 2016

Wayne Moore, former Director of Legal Advocacy for AARP and former Director of Legal Counsel for the Elderly* July, 2012 Available at wmoore95@yahoo.com

Introduction: Why LSC's draft strategic plan is so important

When I was writing my book, *Delivering Legal Services to Low-Income People* (2011)¹, I intended to produce a compilation of what was known about legal aid delivery systems. While writing the chapter on evaluation, I analyzed grantee performance data obtained from LSC through the Freedom of Information Act. I discovered that some grantees appeared to have serious problems with efficiency and effectiveness, while others were very efficient and effective. I also realized that little was known about the quality of services, as grantees don't report case outcomes. I decided to address this discovery by calling for reform. I realized this would be controversial, but the only way to increase and improve the delivery of legal services in an era of declining resources. The uproar this caused from grantees did not surprise me. I had encountered the same response when helping pioneer pro bono services in the late 1970s and legal hotlines in the mid-1980s. Grantees feared that these new systems might be used to replace existing services, because Congress and the President were hostile to legal services.

What did surprise me was the reaction of the state funding agencies and access to justice committees. I had offered all LSC grantees and these state entities to provide copies of the data analysis I done for their programs while writing my book. Nearly half the grantees requested copies but only about a half dozen of the state entities did so. Later, I mailed my program

* These comments do not reflect the views of AARP or Legal Counsel for the Elderly

¹ Available at Amazon.com and <https://www.createspace.com/3466223>

specific analyses to most of the state entities and offered to answer any questions. I received no response. As I learned later, these state entities apparently were satisfied with an NLADA letter that claimed my analysis confused inefficiency and ineffectiveness with the fact that some grantees provided substantial client services other than casework. The excessive time I attributed to inefficient casework was actually being spent on other services such as matters, impact advocacy and community education, as demonstrated by the fact that the “inefficient grantees” received a high percentage of non-LSC funding, which was used for these other services. As my attached article shows, NLADA’s assertions were incorrect. Yet the state entities appeared to be content with the explanation. Since most of these entities were custodians of public funds or public oversight, I expected this information to trigger further inquiry, as a precaution if nothing else. Yet it did not. This could be because they were too busy with other issues such as funding cuts. Maybe they didn’t want to cause further controversy that might attract media attention. Maybe they realized that even if my allegations were true they didn’t have much authority to correct the situation as alternative grantees are non-existent and funding allocations are dictated by law or politics. Whatever the reason, it is clear state entities were unlikely to address the issues.

Therefore, I was delighted by the draft LSC Strategic Plan, which, if properly implemented, will make the needed reforms. The current network of LSC grantees is basically sound, with many programs providing effective, efficient and quality services. However some programs lack some or all of these qualities. The Strategic Plan would directly address these deficiencies by establishing new standards and metrics and procedures for compelling change when necessary. It is also groundbreaking by expanding LSC’s role from a funder to fundraiser and by positioning LSC as a coordinator of services with other entities such as government agencies and the courts.

When implemented, the Strategic Plan has the potential to expand services by as much as 25%, without an increase in funding, as explained in my attached article. It should help its grantees make a greater, positive difference in the lives of clients by improving their effectiveness and by using the reporting of case outcomes to improve quality. My comments on two of the three goals of the Strategic Plan are discussed below (I leave the goal about fiscal responsibility to those more qualified).

Goal One: Maximize availability, quality, and effectiveness of legal services

Initiative One: Identify, promote and spread best practices

This is an admirable initiative. By using the metrics developed under Initiative Two, LSC should be able to identify the top performing grantees and use its evaluation process to identify the practices responsible for their superior performance. These practices can then be shared with others. However there is a potential pitfall to this approach, namely a tendency to confuse innovation with best practices. For example, a common innovation is to use volunteer lawyers or law students in a novel way. The tendency is too assume these systems are more efficient since the advocates are free. However, upon closer examination, some of these systems are actually more expensive than using paid staff or cause an unacceptable degradation in quality. For example, in my book, I demonstrate that using pro bono attorneys for advice is often more expensive than using specialized, paid staff when the costs of recruitment, training, referring cases, and managing quality are considered. Similarly using pro bono attorneys in delivery models where cases are not matched with the attorney's expertise (e.g. Thursday night clinics) can result in poor quality services. Another common "best practice" is to use less expensive staff for common tasks. For example, some programs use paid law students to staff hotlines. However

there is evidence, cited in my book, that this reduces quality. Therefore it is crucial that all “best practices” be vetted for quality, effectiveness, and efficiency.

One “best practice” that deserves immediate attention is the use of unbundled services. This approach is particularly useful for representing clients in uncontested court matters. In my experience most of these uncontested cases require less than four hours of an advocate’s unbundled time (see attached article), whereas some programs average as many as 21 hours on these cases. Again, quality must be ensured by measuring outcomes.

Initiative Two: Implement new performance management system

This initiative consists of three distinct activities. The first is to establish performance standards for quality, effectiveness, and efficiency. The second is to develop metrics and a data collection process for measuring these factors. The third is to create an effective enforcement mechanism for ensuring that the performance standards are met and performance data are satisfactory. I will discuss each of these separately:

1. *Establish meaningful performance standards for quality, effectiveness, and efficiency:*

By establishing new standards, I assume LSC means adding three new criteria to the LSC Performance Criteria for quality, effectiveness and efficiency. In my opinion, this is the quickest route to expanding and improving legal services, because it involves a well-established function of LSC, it can be done relatively quickly, and it automatically becomes incorporated into LSC’s evaluation process.

a) *Quality Standards:* This will be the easiest criteria to establish as most of the work is already done. The ABA Quality Standards for the Provision of Civil Legal Aid and the existing LSC Performance Criteria set out many of the indicia of a quality program, such

as practice systems and procedures, monitoring client satisfaction/complaint information, lawyer development plans, annual evaluations, periodic case reviews, etc. The main activity that is missing is the measurement and reporting of case outcomes, which LSC plans to begin collecting (see below).

There are also a few other criteria that need to be incorporated, namely:

- Every delivery system used by a grantee should have an appropriate quality control mechanism. I have evaluated programs that did not monitor the quality of their pro bono cases or determine the case outcomes resulting from their pro se workshops. In some cases, they eventually were surprised that the resulting services were substandard and made changes; this should not happen.
- Programs should use work plans. Legal services providers deliver a much broader array of services than does a typical law firm, including advice, brief services, pro se workshops, assisted self-help, negotiation, representation at agency hearings, litigation, appeals, outreach, client education, materials for use by clients and advocates, and impact advocacy. Impact advocacy itself can utilize many different methodologies, including community economic development. Thus, providers need more tools to manage these diverse services than those typically used by law firms, because staff must carefully coordinate not only their work but also the timing of their work. The proven method for doing this is a work plan.
- Programs should ensure their client materials (including websites) are written at the proper reading level. This can easily be done using existing websites that measure reading levels. LSC should spot check this as part of its evaluation process.

- Programs should be required to establish an oversight body made up of case service managers and a cross-section of extended services staff to discuss productivity and outcome results at least quarterly and create and manage the following systems: casework protocols (checklists of timelines and the tasks required for common cases, including proven strategies and tips for saving time or conserving costs), practice standards, quantitative benchmarks (goals for the number of case closures for the coming year based on past experience), lawyer development plans, annual evaluations, periodic case reviews and reporting, and client satisfaction assessments.

b) *Effectiveness Standards*: The current LSC Performance Criteria do mention effectiveness, but many more criteria need to be added. The biggest issue concerns the complexity of case services. Programs are required and typically do a good job of identifying priority case types such as domestic abuse. However some programs primarily provide brief services in these cases instead of extended services. This is contrary to the priorities identified by the “right to counsel” movement, which argues that representation in contested court cases and administrative hearings are so important as to warrant a right to counsel. Thus LSC should require programs to set priority case closure codes for each priority case type. Overall, cases closed by negotiation, a contested court decision and administrative agency decision should exceed 20 percent. Several programs have percentages below 6 percent (see attached article).

Another important issue concerns the use of volunteer lawyers. As mentioned above, the use of volunteer lawyers is sometimes more expensive and produces lower quality services than specialized, paid staff. Also many recruited lawyers are never used because

their expertise is not needed. Programs should be required to use volunteers productively and develop methods for identifying clients with problems suitable for the unused volunteer attorneys.

A third issue concerns the fact that, on average, 58 percent of the cases that programs close with advice and brief services actually require more extended services to obtain the best outcomes for clients². Whenever possible, programs should be required to use unbundled services for these cases and monitor them through case completion, as the time required is comparable to that currently spent by many programs on brief services.

A fourth issue is that LSC grantees, on average, obtain more uncontested court decisions than contested ones. Many of these uncontested cases can be more economically handled by court-based self-help centers, while the centers are ill-equipped to handle contested matters because they don't provide legal advice. LSC grantees should coordinate with these centers by referring uncontested matters to them and receiving contested matters in return.

Finally, some programs handle very few litigation cases or court appeals. However, these cases can positively affect many more people than others can, including cases that set precedents, impose injunctions, or prohibit an illegal government or business practices. Ironically, programs that close fewer appeals tend to also close fewer cases per advocate (see attached article). Below average programs should be encouraged to handle more of these cases.

² Programs closed 130,000 advice and brief services cases during the test period. Programs estimated that, in the case of 76,000 of these cases, extended services would have been more likely to enable the client to obtain a satisfactory outcome. Legal Services Corporation, Documenting the Justice Gap in America 6 fn8 (Sept. 2005)..

c) *Efficiency Standards*: This standard will cause the most controversy and push back from grantees. Yet this is the area in need of the most improvement as shown by my analysis in the attached article. One reason for this is that efficiency has never been a high priority in the legal profession, particularly for cases billed by the hour. However this is beginning to change. Even large law firms are being asked by corporate counsel to charge flat fees or set fee caps for certain work. The legal aid literature and conference agendas are nearly devoid of any mention of efficiency or productivity, while prepaid legal services programs are obsessed with this issue as their profits depend on it. Therefore, the process for establishing this standard will be challenging. For example, one of the most common causes of inefficiency is a cumbersome intake system. For example, most prepaid programs use a one step (lawyer) or two step (receptionist and lawyer) intake system where most advice cases are resolved at the second step. Some LSC grantees use a multiple step process involving numerous staff before clients are accepted or rejected for services. Also, many programs use case acceptance meetings where all advocates meet usually weekly to review all new requests for services and decide which ones to accept for representation. No expert in efficiency would condone this practice plus it forces clients to wait a week or more to learn whether the program will serve them. But programs strongly defend this practice as important for staff education and morale; there are cheaper ways of achieving these goals. Similarly, requiring a grantee to centralize telephone intake at one office will increase efficiency and improve the referral process, as demonstrated in my book. However programs will cite special client needs and other factors to justify a more cumbersome system. However these special needs can usually be addressed by supplemental intake

methods targeted solely at these clients, allowing the vast majority of cases to be handled through centralized telephone intake.

Another common inefficiency is the use of cut-and-paste and fillable forms instead of document generators. Grantees are in the forefront of developing generators for use by clients, but not for their own staff. The creation of a complete set of documents for a divorce or landlord tenant case can take 20 minutes with a generator but hours using other methods. Most prepaid programs use generators for nearly all their documents, because other methods have reduced productivity³.

Most programs don't use unbundled services which can dramatically increase efficiency as discussed above.

Finally, most programs don't set quantitative goals for or measure the billable hours of staff advocates, as prepaid programs do. These goals should not be blindly enforced, but monitoring them often helps identify inefficiencies that otherwise might not be spotted. You may want to consult an expert in efficiency within the prepaid network⁴. Also, an expert in using systems to provide efficient prepaid legal services is John Wachsmann⁵.

d) *Questions to accompany standards*: LSC performance criteria are accompanied by questions that can be used by evaluators when evaluating grantees. In my attached article, I have listed potential questions for the criteria on efficiency and effectiveness.

³ To learn more about this issue contact Paul K. Regan, Regan Associates, 45 School Street, Boston MA 02108, Tel: 617/367-1100; his prepaid firm handles a lot of litigation and has a state-of-the-art document generator and case management system.

⁴ William R. Go, Go & Associates,
225 Truxtun Avenue
Bakersfield CA 93301
Tel: 661/633-9165

⁵ Wachsmann & Associates, P.C.
6053 South Quebec Street, Suite 103
Englewood CO 80111
Tel: 303-796-8787

2. Establish metrics for measuring and analyzing quality, effectiveness and efficiency: LSC should be prepared for considerable opposition to this strategy. For example, grantees have successfully resisted the reporting of outcome measurements for the past 10 years. Programs will never accept the proposition that a set of metrics can accurately measure quality, efficiency and effectiveness, because of the influence of other factors including case type, client type, case complexity, number of appeals closed, amount of services other than casework, percentage of staff other than attorneys and paralegals, etc. LSC must persevere in its effort to create metrics by acknowledging that no set of metrics is perfect and that metrics alone will never be used as conclusive proof that a problem exists, without further investigation. There are numerous reasons why metrics are critical to performance improvement:

- They can help spot problems that would otherwise go undetected
- They can help estimate the effect that a problem has on overall program performance. When I evaluated programs, I often identified certain inefficiencies and ineffective practices, but could not prove their overall impact on performance in order to convince programs to change.
- They can help determine when inefficiencies and ineffectiveness have been corrected
- They help LSC avoid the awkward position of requiring specific changes that a grantee opposes, as long as the metrics improve sufficiently
- They help identify staff and volunteer training needs
- They help justify budgets to correct identified deficiencies
- They help identify the most effective services for expansion
- They help with the preparation of program improvement plans

- When compared with past results, they can identify an increase or decrease in performance
- Outcome metrics determine whether grantees really make a difference in the lives of clients

The metrics selected should meet certain criteria, namely:

- Allow the comparison of programs, because it is difficult to assess quality, efficiency and effectiveness in a vacuum. Unless one knows what is achievable, it is hard to convince staff that improvements are needed;
- Measure time rather than cost. It is difficult to compare costs, as they vary with the local cost of living, they are difficult to standardize (the costs reported by one program might not include all the expenses counted by another), and lower costs do not always equate with better efficiency (a program that receives free space has a lower cost per case, but is not necessarily more productive).
- Use current data to the extent possible to minimize the burden of gathering new information.

An expert on using case type and billable hours to monitor the efficiency of a national prepaid program with many staffed offices and contract attorneys is Dolores Galea⁶.

a) *Quality metrics*: Outcome codes have been developed for most common case outcomes, but unfortunately they have not been standardized for all programs. Most of

⁶ UAW-GM Legal Services Plan
200 Walker Street
Detroit MI 48207-4229
Tel: 313/872-1100

these codes don't capture unsuccessful outcomes. Also, they gather little information that can guide improvement. For example, in cases of negotiating more time for tenants to vacate their premises, it would be helpful to know how much time they received, so that others could learn from those who obtained the best results. The codes sometimes don't capture the amount of economic benefits clients obtain, which can demonstrate the program's effect on the economy of the low-income community.

Currently, programs that collect case outcomes don't do so for most advice and limited action cases. Programs really do themselves a disservice by not collecting this information, as many of these cases have significant outcomes.

Determining outcomes for a statistically valid sample of advice and limited action cases will allow outcomes to be compared among similar programs, without causing the burden required to collect outcomes for all of these cases. Law students could inexpensively make call-backs to clients to collect this information.

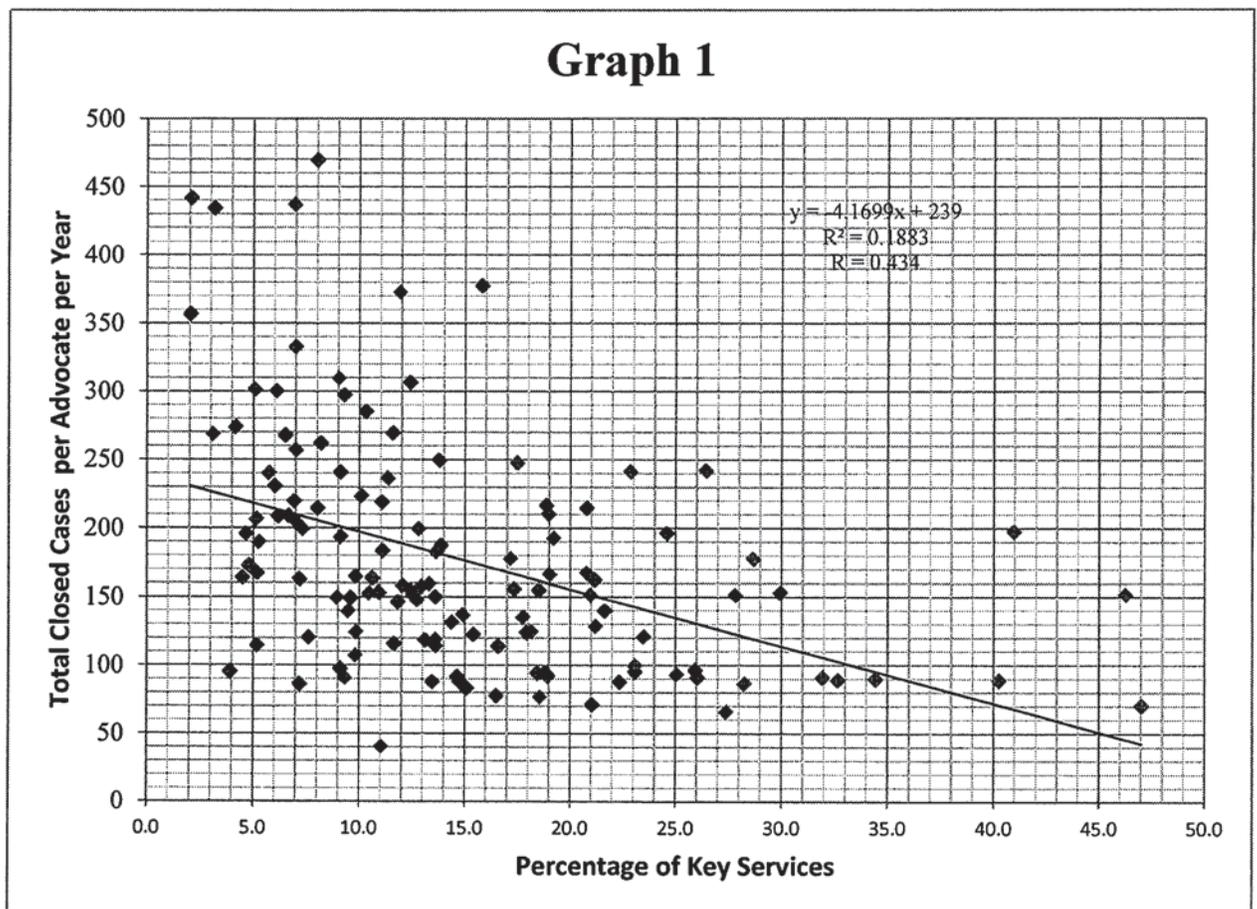
b) *Efficiency metrics*: There are several metrics that use currently collected data that can help evaluate efficiency, namely:

- *Total closed cases per advocate per year and the percentage of key services cases*. The first statistic is calculated by dividing the total number of CSR cases closed during a year by the full-time equivalent number of staff and contract attorneys and paralegals devoted solely to CSR cases. (The number of volunteers devoted to closing these cases is not counted as their time is free). Total CSR cases are currently collected, but programs will have to start collecting the latter statistic, although a good estimate is sufficient as the current range in data among grantees is so large. The second statistic is calculated by determining the

percentage of all cases closed during the year with negotiation, a contested court decision and an administrative agency decision (Closure codes F, G, H and Ib).

Key services cases are the types of cases that advocates believe are so important as to warrant a right to free counsel. These cases don't include those closed by advice, limited action, uncontested court decisions, extensive services or other.

These two statistics allow the creation of the following graph (which is based on 2009 data from LSC):



This graph allows one to compare closed cases per advocate among programs which handle cases of similar complexity. Note that programs with similar key services

percentages can vary by 100, 200 or even more closed cases per advocate. The above graph counts all attorneys and paralegals and not those devoted solely to handling CSR cases, but the range in data suggests that this over count is not the sole cause and that inefficiency may be to blame. (See my attached article which makes a more convincing analysis).

- *Ratio of managers to non-managing advocate staff (attorneys and paralegals.*

Calculating this ratio can help detect inefficiency. Consultants that advise city and county government law offices recommend that the ratio of management attorneys to non-management attorneys be no more than 0.10 to 0.15⁷. In contrast, the average ratio of management attorneys to non-management attorneys and paralegals for all LSC grantees in 2010 was 0.25⁸.

- *Annual billable hours per advocate.* This is determined by calculating the total number of hours spent on client services divided by the total number of FTE attorneys and paralegals devoted to direct client services. This is the same as the “billable hour” metric commonly used by attorneys in private practice. This does not include time used for leave, administration, case review meetings and trainings, and similar activities. LSC regulations currently require grantees to record this time for each case and be able to aggregate it using their case management systems⁹. However LSC does not require grantee staff to keep track

⁷ See James Wilber, Altman Weil, *Best Practices of City and County Civil Law Offices* at http://www.altmanweil.com/dir_docs/resource/b0541231-be60-491b-96ab-c6f1d5e1b4c5_document.pdf.

⁸ 1128 managing and supervising attorneys and 4553 staff attorneys and paralegals. LSC Fact Book 2010 at 35, supra note 8. See also Author’s Book at 193.

⁹ 45 CFR 1635.3 Timekeeping requirements.

of time spent on client services other than CSR casework, which would have to be captured. If this statistic varied considerably among grantees, it would indicate that those with fewer billable hours per advocate may be more inefficient.

- *Average hours per case for each closure code.* This is calculated by dividing the total number of hours billed per year to all CSR cases closed with a specific closure code by the number of these cases. Programs can currently calculate these numbers. This metric should be collected for each separate grantee office and unit (e.g. hotline). Comparing this metric among grantees and among units within the same grantee could help spot inefficiencies.

c) *Effectiveness metrics.* While the draft strategic plan does not mention these metrics, they are none-the-less important. Their omission is somewhat surprising since effectiveness is a major focus of the strategic plan. I recommend the following metrics:

- *Percentage of key services:* The percentage of cases closed with key services is a measure of a grantee's effectiveness according to "right to counsel" advocates. A similar metric is the total number of CSR cases closed annually with key services divided to the number of FTE attorneys and paralegals devoted to closing reported CSR cases.
- *Impact scores:* The above metrics allow the evaluation of a program's casework, but not its other services, including community education, materials and website development, matters, coalition building, community economic development, and other community advocacy.

However a metric developed by LSC for its Delivery System Study (DSS)

can help evaluate these other services⁸⁸. The DSS used on-site attorney teams to measure the impact of such services, defining impact as the achievement of relatively permanent improvements or avoidance of relatively permanent deteriorations in the legal rights or basic living conditions of significant segments of the eligible population. Experienced, trained attorneys collected information about each activity using semi-structured interviews with appropriate advocates. A panel of experts reviewed this information and assigned a score to each completed activity. Each judge rated six sets of 25 randomly selected impact reports for a total of 395. Three or four judges reviewed each set, and all 11 judges reviewed 27 of the reports to test the reliability of the scores and provide a means of adjusting scores for differences in judges' rating behavior. Scores for each of the program's advocacy activities were added and divided by the total cost of the program.

I propose using the same method, except that programs prepare and submit their own advocacy descriptions on a standardized form to save costs.

Also, new projects should not be evaluated until they are completed or reach maturity (if they are intended to be ongoing) so the evaluations are based on results and not potential. Existing LSC evaluation staff could do the scoring. The evaluation should expand to include what LSC refers to as "matters", or matters could be scored separately. The scores are not intended to be precise, but sufficient to group programs into tiers where

⁸⁸ Legal Services Corporation, *The Delivery Systems Study: A Policy Report to the Congress and the President of the United States* (June 1980).

successful programs can be identified for learning purposes and programs with poor scores can be targeted for technical assistance and training.

Evaluators should send each program the comments that form the basis of the scores with suggestions on how to improve their activities. The evaluators may want to score websites separately, as this might provide additional useful information.

- *Percentage of cases closed by volunteers by closure code.* As mentioned above, it may cost more to use volunteers for advice and limited action cases than paid staff, unless the lawyers are deployed in a high volume delivery system such as a self-help center or workshop. Therefore the percentage of cases closed by volunteers with extended services is a measure of effectiveness and is currently collected by grantees.
- *Number and percentage of active attorneys that do not accept cases in a given year.* Programs do not use all of their active attorneys each year, primarily because their expertise does not match the programs' case priorities. However, since grantees only handle 20 percent of the need, a failure to use a high percentage of their active attorneys is a sign of ineffectiveness.
- *Percentage of cases closed with advice or limited action that requires more extended services to obtain the best outcomes for clients.* Programs collected this information for the preparation of the Determining the Justice Gap report. They should continue to do this on an occasional basis as a high percentage of these cases reflects on a grantee's effectiveness.

- *Number of contested court cases and appeals per advocate.* As mentioned above, these cases are the most likely to positively impact the client community. The number of these cases per advocates devoted to casework is an indicator of effectiveness.
- *Percentage of court decisions that are uncontested.* A high percentage of uncontested cases receiving full services is a reflection on a grantee's effectiveness.
- *Client satisfaction surveys:* Programs should conduct standardized client surveys using statistically valid methods so that results can be compared among programs. It is difficult to truly assess client satisfaction in a vacuum. Comparable data helps programs determine if improvement is needed. Programs could supplement these surveys with their own questions. These standardized questions could include: What difference has legal aid made in your life? (In one survey 55 percent said it made "a lot" and 13 percent said it made "much" difference¹⁰); Have your legal problems affected your health? (Results have ranged between 17 and 51 percent¹¹); How long did your problems persist before legal services addressed them? (Many problems persist for years); Did the legal services you received prevent other problems from occurring? (Some problems, like domestic violence, trigger a host of others); Did your situation change due to: a) the legal services received b) your own efforts or c) the matter

¹⁰ Wayne Moore, Making Self-Evaluation Part of Program Management, AARP 2 (2002).

¹¹ Jennifer Goldberg & Shawnielle Predeoux, Maryland Legal Aid Outcomes Survey, Maryland Legal Aid Bureau 4 (July 6, 2009); Pascoe Pleasence, Nigel Balmer, Alexy Buck, Aoife O'Grady, & Hazel Genn, *Civil Law Problems and Morbidity*, J.Epidemiol Community Health, Vol 58 552 (2004).

resolving itself? (This is to ensure a causal link between services and results); and Did your problem get better, stay the same, or get worse?

Programs with deficient survey results can use the survey information to identify areas in need of improvement.

d) *Needs assessment metrics*: The current process consists of determining the priority case types based on client needs. But this is overly simplistic. For example, would providing advice only for priority legal problems really meet the needs of clients? The process should be expanded to determine the complexity of services that will be delivered for each priority problem. For example, should more contested court cases be handled? Other factors should be considered such as whether the priority problems should be those that affect clients' health, are likely to lead to more problems if left unresolved (e.g. domestic violence), or are likely to persist for years if unresolved. Maybe priority should be given to legal problems can lead to a downward spiral in clients' lives.

3. *Establish performance triggers*: The proposed carrots and sticks are good ones. LSC also has the ability to withhold 5 percent of funding, impose corrective grant conditions and award provisional grants; these no doubt are included in the category of "other actions permitted by law and regulations". Another action that should be considered in worst case scenarios is to allow the division of a service area between two grantees: one to handle advice and brief services and one to handle the remaining cases. This bifurcation has worked well in New Hampshire, Vermont and Connecticut. All telephone intake would be received by the advice grantee, which would refer cases requiring extended services to the other grantee. The second grantee would be allowed to conduct

narrowly focused intake to obtain more priority cases if necessary. This would allow grantees in states with multiple grantees to expand into another grantees service area without having to provide extended services in the area. Also prepaid programs may be willing to apply for these advice and limited action grants as they currently provide these services in most case types handled by legal aid programs and could hire new staff to cover the remaining areas.

Initiative Three: Provide support to improve quality of services

I fully support all the activities discussed in this section. I think particular attention should be given to the following:

- Training on unbundled legal services
- Training on the best practices for operating certain delivery systems such as hotlines, pro bono programs and pro se workshops
- Training about efficiency, which is different than training about efficient delivery systems; efficient systems can be operated inefficiently. This training has never really been provided to programs.
- Grants to develop or license existing document generators. There are many commercial document generation programs that could currently meet most of the needs of LSC grantees (see www.directlaw.com). Also LSC could license document generators from prepaid providers in most states.
- Grants to develop intake protocols to match clients with the needed services.

Although such protocols would vary somewhat from state to state, the greatest need is for a base set of protocols for each case type that could be modified by each state.

Their purpose is to determine clients' abilities to resolve their own problems and the

amount of legal assistance this would require, .e.g., advice, brief services, unbundled services, or full representation. This is key to maximizing services.

- Agreements with networks of interpreters and translators to give grantees discounts
- Grants to test ways to better utilize volunteer lawyers

Many issues about the delivery of legal services to low-income people require more research. LSC should partner with law schools and universities to conduct such research as:

- determining the types of legal problems that, when left unresolved, tend to trigger other legal problems (this will help set priorities);
- determining best outreach practices for serving hard-to-reach groups of low-income people;
- determining the best outreach methods for finding clients with certain high-priority legal problems, such as those who are victims of abuse, at risk of homelessness, or have been denied public benefits;
- developing efficient, high-quality methods for handling common legal problems using unbundling and assisted self-help;
- determining the best methods for providing legal information to clients with low literacy skills; and
- Determining the characteristics of low-income clients who are most likely to take no action when experiencing a legal problem (e.g., race, age, being consumed by care

giving responsibilities). This is needed to determine who should be targeted for community education and outreach.

Goal two: Become a leading voice for access to Justice and quality legal assistance

My comments are directed at LSC's proposed coordination function.

Currently court-based self-help centers help hundreds of thousands of people successfully obtain uncontested court decisions, but they don't usually provide legal advice or effectively help people with contested matters. LSC grantees needlessly spend substantial resources representing clients in uncontested matters but can provide advice and effectively represent clients in contested court cases. Close coordination of the two networks could generate exceptional synergy.

Another great opportunity concerns coordination between LSC grantees and other providers of legal services. Australia has established an annual conference attended by all providers, which, according to the attendees has greatly increased coordination among providers. This also can save costs as providers typically provide inaccurate referrals to each other which waste resources devoted to screening and referring clients elsewhere.

Another opportunity for coordination may be difficult to achieve in practice. This concerns cases involving government agencies. While evaluating programs, I have found advocates (primarily paralegals) who have great working relationships with their counterparts in government agencies. They are able to resolve many more cases at the administrative level instead of appealing them to a fair hearing. This results in prompter decisions and less expense on both sides of the case. It would be extraordinarily beneficial to all concerned if a level of trust could be established

between LSC grantees and agency staff that allowed more cases to be resolved before the fair hearing.

Biography of Wayne Moore

Wayne Moore has thirty five years of experience in designing, managing and writing about the delivery of legal services. He was Director of AARP Legal Counsel for the Elderly (LCE) for twenty five years and simultaneously served in various management positions with AARP including Director of Legal Advocacy, Co-administrator of the AARP Foundation, and Director of Advocacy Planning and Issues Management. He helped pioneer several delivery systems including pro bono programs, legal hotlines, brief services units and court-based self-help centers. He implemented and managed a pro bono unit, legal hotline, brief services unit and neighborhood self-help center at LCE and created and managed a network of statewide legal hotlines for older Americans, 14 attorney impact litigation group, national legal hotline resource center, home study paralegal certificate program with the USDA Graduate School, national legal training program, national support center for law and aging, and a discount legal services programs for AARP and its members.

He has written extensively on the subject and has presented at numerous international, national and regional conferences. He helped establish the first ABA Pro Bono Conference, the ABA/NLADA Equal Justice Conference and the National Law and Aging Conference. He has served as a member of the ABA Standing Committees on Lawyer Referral and Information Services, the Delivery of Legal Services, and Group and Prepaid Legal Services (serving as President in 2001-2002), and represented AARP on the ABA Coalition for Justice. He has received several awards including the first Award for Innovations in Equal Justice from National Legal Aid and Defender Association, the Louis M. Brown Award for Legal Access from the American Bar Association, and two Sustained Excellence Awards for Creativity from AARP.

After retiring from AARP, he established an unbundled law practice for three years to provide

flat fee service to low and moderate income residents of DC, MD and VA.

Legal Services Programs Can Avoid Service Reductions by Improving Efficiency and Effectiveness

By Wayne Moore (July 2012)

Funding for civil legal aid programs is declining at a time when the need for services is greater than ever. Aid was about \$1.6 billion at the beginning of 2010¹. LSC funding was then reduced by 17 percent from \$420 million in FY2010 to \$348 million for FY2012². Interest on Lawyer Trust Account (IOLTA) funds, derived from pooling interest from lawyers' trust accounts, are also decreasing. In 2007, IOLTA income reached an all-time high of \$371.2 million nationally; now it is half that.³ Since this funding is based on the interest rates paid by banks, the situation won't improve any time soon. The Federal Reserve recently announced that it would hold interest rates low through late 2014⁴. States and cities cut spending at the end of 2011 by more than any time in a decade⁵ and it cannot be expected to grow significantly in the near future.

In response, legal services programs have been laying off staff. In an LSC survey of its grantees in January 2012, programs reported that they anticipate laying off 393 employees in 2012⁶. In

¹ Legal Services Corporation (LSC) \$420,000,000; other public (federal and local) \$283,853,000; state general revenues and filing fees \$420,249,500; IOLTA \$183,708,000; foundations/corporations \$112,272,000; legal community/bar \$76,245,000; Cy Pres \$20,310,000; Other \$90,958,000. Alan Houseman, *Civil Legal Aid In The United States, An Update For 2011*, Center For Law And Social Policy, April 2011 at http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Helsinki_2011/national_reports/USA_National_Report_ILAG_2011.pdf.

² Steve Barr, *Staff Reductions Hit Legal Aid Programs*, LSC, January 26, 2012 at <http://www.lsc.gov/media/press-releases/staff-reductions-hit-legal-aid-programs>.

³ Neeta Pal, *Cuts Threaten Civil Legal Aid*, Brennan Center for Justice, April 22, 2011 at http://www.brennancenter.org/content/resource/the_economy_and_civil_legal_services1.

⁴ Board of Governors of the Federal Reserve System, *Press Release*, January 25, 2012 at <http://www.federalreserve.gov/newsevents/press/monetary/20120125a.htm>.

⁵ Dennis Cauchon, *Spending by States and Cities Declines*, USA Today, February 13, 2012 at 1.

⁶ Steve Barr, *supra* note 2.

2011, they lost 833 positions through layoffs and attrition. Together, the loss of 1226 full-time personnel represents a reduction of nearly 14 percent from 2010⁷.

This article explores how services can be preserved despite the decline in staffing. The conclusion is that services can be maintained or even increased if some legal services programs streamlined their operations and maximized the effect of their services.

The first section of this article provides evidence that some LSC programs handle caseloads and other advocacy comparable to those of other programs, but use fewer staff. It also describes some accepted methods for boosting staff output and efficiency. Improving efficiency does not mean working faster or shortchanging time spent with clients. Generally, legal aid staff is hard working and dedicated. Instead, the focus is on using better technology (document generators), methods (telephone conversations can take a sixth of the time required by face-to-face conversations), and systems (assigning common, routine cases to specially trained staff who use streamlined processes). This section does take the somewhat controversial position that programs should provide only the services that clients cannot perform for themselves. This is referred to as unbundling services. This approach is becoming more common among private practitioners who serve middle income clients who simply can't afford full representation. Of course, advocates need to monitor clients in these cases and provide additional services when necessary.

The second section defines effectiveness and shows how some programs can increase their effectiveness and have a greater impact on their clients and the client community. The third section asserts that greater efficiency and effectiveness cannot be achieved without the proper measurements; it proposes a workable set of measurements that will not be burdensome to

⁷ Id.

collect. The article concludes with recommendations to funders and programs that can help them maintain or even increase services despite declining staff.

To understand this article, an explanation of the data LSC collects from programs is required.

For each closed case, LSC collects the types of services that were provided; specifically: counsel and advice, limited action, settled without litigation, settled with litigation, administrative agency decision, uncontested court decision, contested court decision, appeal, other, and extensive services. Extensive and “other” services account for only 3.4 percent of cases and are not discussed⁸. Counsel and advice and limited action cases don’t involve negotiation or representation before a court or administrative agency, require an average of only a few hours to close, and represent 78.1 percent of all cases⁹. An uncontested court decision involves cases where the opposing party does not dispute the client’s position; these cases are particularly amenable to greater efficiencies and make up 4.7 percent of cases¹⁰. An appeal represents the review of a case by an appellate court and is the service most likely to impact the client community in addition to the represented clients¹¹. The remaining cases are referred to as “key services,” as clients are least likely to find these services elsewhere¹². Finally, advice and limited action cases are sometimes referred to as brief services. The remaining cases, including key

⁸ LSC Fact Book 2010 at 19 at http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC_2010_Fact_Book.pdf.

⁹ Id.

¹⁰ Id.

¹¹ LSC, Case Service Report Handbook, 16-7 (2008) at http://www.lsc.gov/sites/default/files/LSC/pdfs/CSR_Handbook.pdf.

¹² Of the low-income people who received help from a lawyer, 74 percent reported that they received that help from a lawyer in private practice. ABA Consortium on Legal Services and the Public, Findings of the Comprehensive Legal Needs Study: Legal Needs among Low-Income Households 53 (1994). Most of these cases involved advice and limited action. Neighborhood Legal Services of Los Angeles County handled 49,100 cases at four court-based self-help centers in one year, whereas the total number of uncontested court cases closed in 2010 by all LSC grantees was 44,258. Diana Avendano, Self-Help Project Coordinator, Neighborhood Legal Services of Los Angeles County, e-mail to author dated July 20, 2006 and LSC Fact Book 2010 at 19, *supra* note 8. Thus advice, limited action and help with uncontested court cases are most likely to be found elsewhere.

services, uncontested court cases, extensive services, and "other" are sometimes called extended services.

I. Doing more with less

A. Some programs appear to provide comparable services with less staff

Evidence indicates that some legal services programs use fewer staff than others to close a comparable number of cases. There could be several reasons for this: 1) complexity of services provided (e.g., court representation including trial takes much longer than an advice only case), 2) types of cases handled (e.g., foreclosures usually require more time than cases involving wills), 3) number of appeals handled (these cases can take hundreds of hours), (4) amount of advocate time devoted to services other than reported cases, 5) percentage of staff other than paralegals and attorneys (support staff can help advocates handle more cases), 6) types of clients served (e.g., limited English speaking clients often take longer to serve), and 7) differences in the efficiency of the programs. The third issue arises because LSC grantees report the total number of advocates (attorneys and paralegals) instead of those dedicated solely to the reported cases.

1. Case complexity

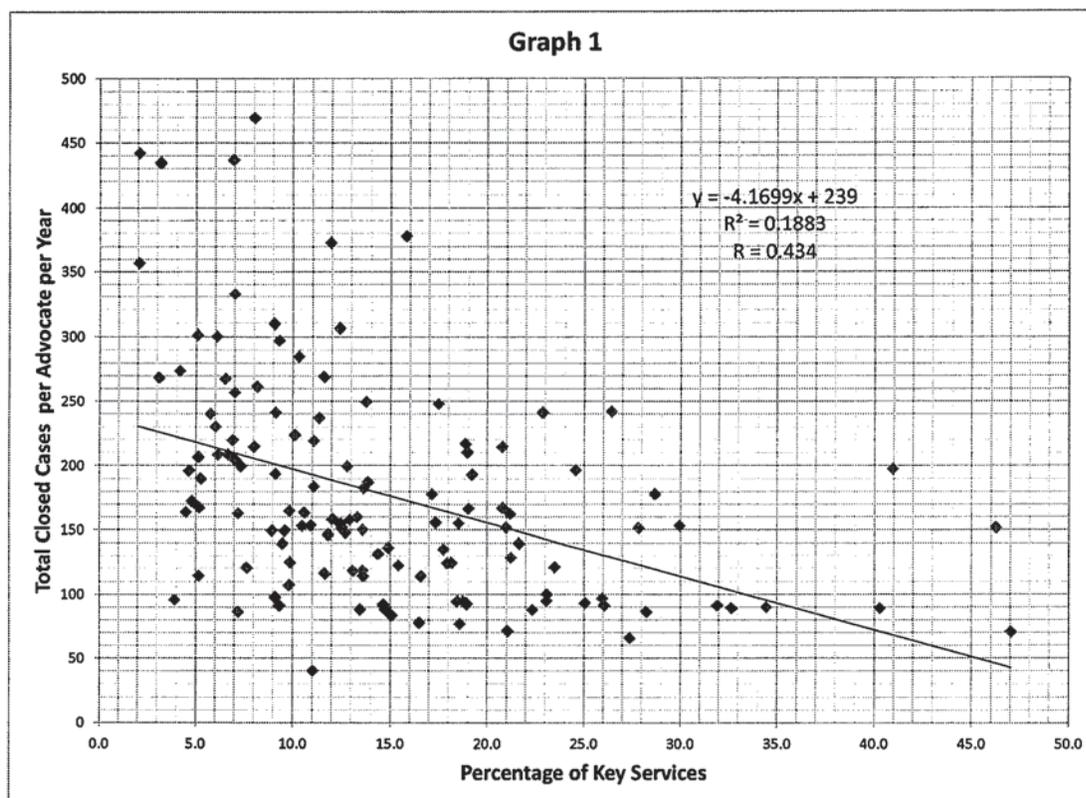
The impact of case complexity on the number of closed cases can be determined by plotting the total number of cases closed annually per advocate by case complexity for every LSC grantee¹³.

Case complexity is determined by calculating the percentage of cases that are closed with key services, since these are the most complex cases (other than appeals, which are discussed below).

The number of advocates is determined by adding the total number of attorneys and paralegals

¹³ For example, one LSC grantee reported to LSC that it closed a total of 10,849 cases in 2009, employed 61 attorneys and paralegals, and closed 3110 of these cases using key services. The annual average number of closed cases per advocate is 178 and the percentage of key services is 29 percent. Source of data is LSC's response to the author's 03/03/2011 Freedom of Information Act request for 2009 data (on file with author).

employed by each program. Graph 1 below shows the relationship between the total number of closed cases per advocate and the percentage of key services cases they handled in 2009 for all LSC grantees, except those that only serve Native Americans, Guam, and Micronesia¹⁴.



(Two outlier LSC grantees are omitted from the graph: (0.6, 768) and (7.1, 1257)).

As expected, a strong correlation appears between the number of closed cases per advocate and the percentage of key services. Programs that handle a larger percent of key services close fewer cases per advocate. But the graph also shows that LSC grantees that fall well below the sloping line have counterparts above the line that handle a similar complexity of cases. Yet those below

¹⁴ LSC's response to author's request, Id.

the line close 100 to 200 fewer cases per advocate than those above. For example, the key services ratio for two programs is 10 percent but one closes 90 cases per advocate per year (9 key services cases, 81 others) and the other closes 300 per advocate per year (30 key services cases, 270 others). This shows that factors other than case complexity cause the disparity in the data.

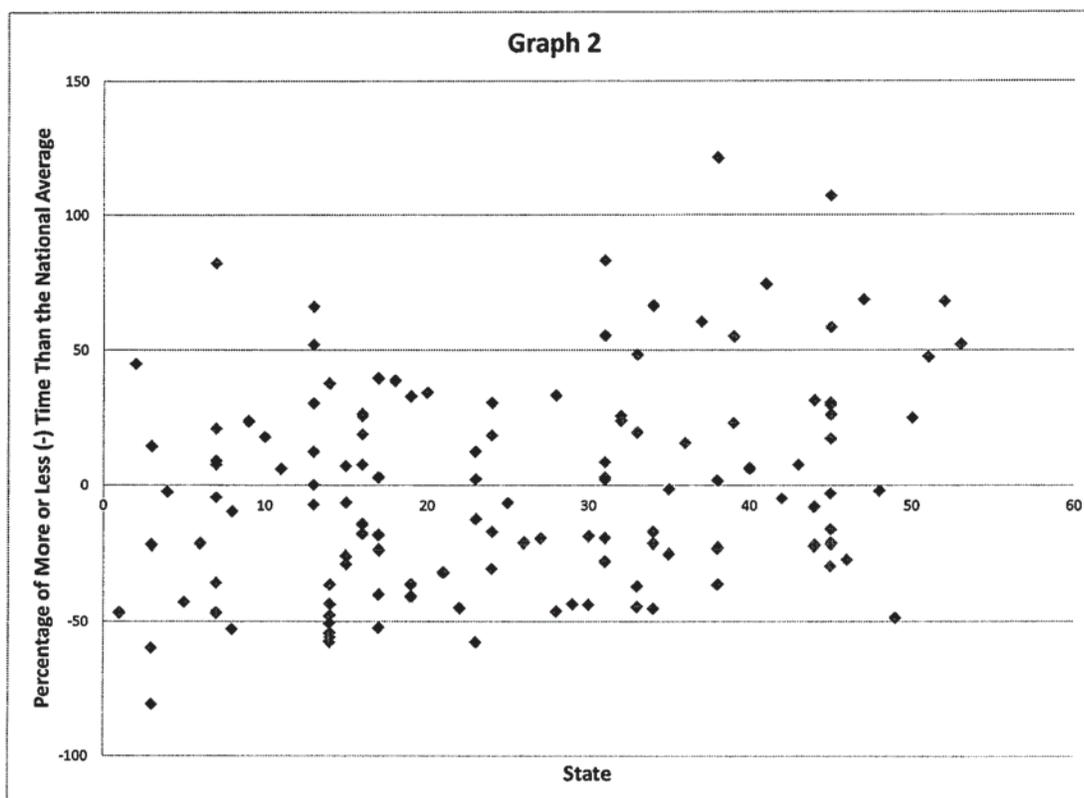
To analyze the effect of the six remaining factors (case type, number of appeals, amount of other services, percentage of other staff, client type and efficiency), it is helpful to use other related data. As explained above, closed cases of LSC grantees can be divided into two categories: brief services and extended services. One can calculate the overall average time that LSC grantees spend on a brief services case and the average for an extended services case using national data¹⁵. These two averages can then be used to calculate the total time required to close each grantee's annual 2009 caseload if its advocates spent the average amount of time on each case¹⁶. One can also calculate the total time they actually used to close their caseload if their advocates each spent 1200 hours annually on them.¹⁷ Finally one can compare the total actual time with the total "average time" as a percentage¹⁸.

¹⁵One can use LSC national data for 2008 and 2009 to determine the average amount of time used to close a brief services case and an extended services case (assuming advocates spend 1200 hours annually on these closed cases and the averages are about the same for both years). The average times for 2009 are 25.76 hours for an extended services case and 2.6 hours for a brief services case. One can double check these times as follows: In 2009, grantees closed 194,626 extended services cases and 725,821 advice and brief services cases (total = 920,447) with 4174 attorneys and 1577 paralegals (total = 5751 FTE advocates). If one multiplies 194,626 by 25.76 and 725,821 by 2.6, adds them (6,900,700), and divides by 1200, this yields 5751. LSC Fact Book 2008 1, 11 at <http://grants.lsc.gov/sites/default/files/Grants/factbook2008forRIN.pdf> and LSC Fact Book 2009 1, 11, at <http://grants.lsc.gov/sites/default/files/Grants/factbook2009.pdf>.

¹⁶ For example, in 2009 one LSC grantee closed 1471 brief services cases and 760 extended services cases with 29 attorneys and paralegals. Assuming an average amount of time was used, its advocates would have spent 23,403 hours on these cases, or $(760 \times 25.76) + (1471 \times 2.6)$. LSC's response to author's request, supra note 13.

¹⁷ In the above example, the program had 29 advocates. If each spent 1200 hours on these cases, they would have actually spent a total of 34,800 (1200x29) hours to close these cases. (It is reasonable to assume that legal aid advocates work about 37.5 hours per week with 13 holidays and an average of 5.6 weeks of vacation and sick leave. This results in 1640 hours worked. Some legal services directors report that about 75% of worked hours are devoted to direct client services, for a total of 1230 billable hours (source: conversation with John Arango on 5/2007)).

¹⁸ Since the "average time" was 23,403 hours and the actual time was 34,800, these advocates spent 49 percent more time than average on the cases $(34800 - 23403) / 23403 * 100$. (Note that it does not matter how many annual hours per



(Three outlier LSC grantees are omitted from this graph (12, 356), (15, 160), and (45, 168))

Some programs spend less time than average on a case and are designated by negative numbers in graph 2, where the “x” axis represents the various states numbered 1 to 53 (including DC, PR, VI), and the “y” axis is the percentage of additional (or less time) that a LSC grantee takes to close a case compared to the national average. Programs that spend more time than average appear above the x axis. By definition, half the grantees fall above the x axis and half below.

Graphs 1 and 2 show a high correlation. All but nine of the 65 LSC grantees that fall at or below the sloping line in graph 1 appear above the x axis in graph 2 (spend more time per case). Also,

advocate are assumed as this number drops out when calculating the percentage; but the analysis does assume that the average annual number of hours for a program’s advocates is the same as the national average).

all but one of the 64 grantees that appear above the sloping line fall below the “x” axis (spend less time per case). The results in graph 2 are more favorable than graph 1 as a net of eight programs that appear below the sloping line (perform poorer than average) appear above the x axis (perform better than average).

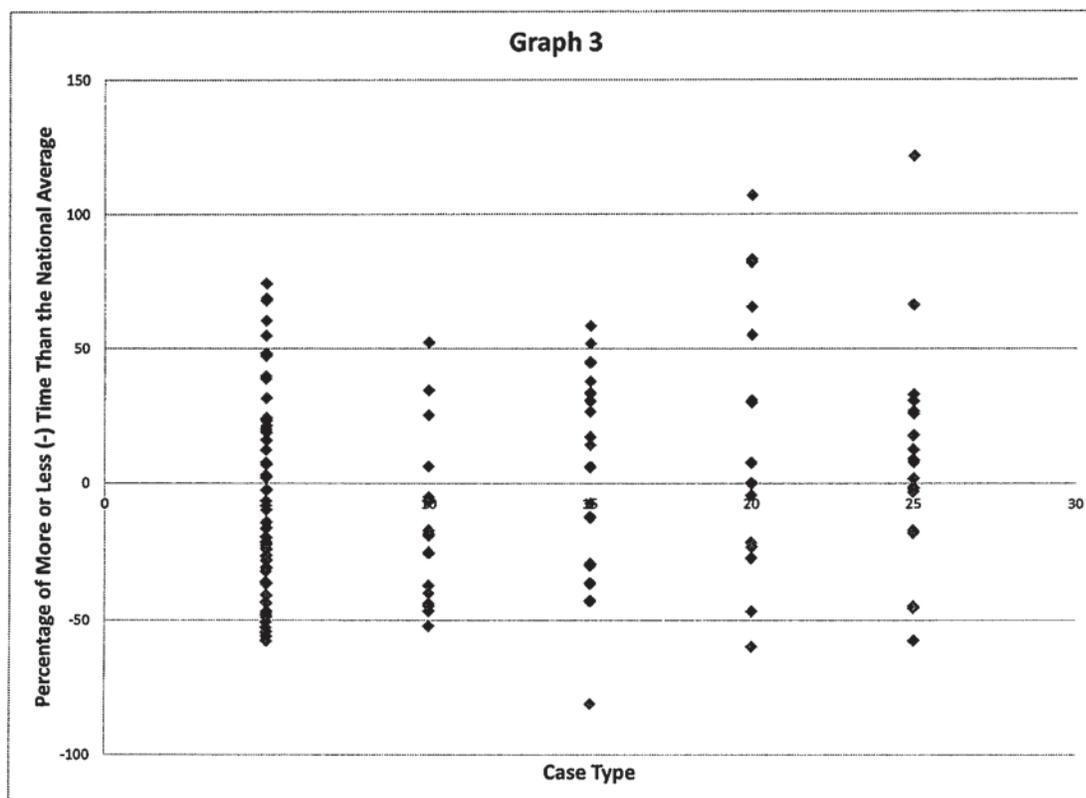
2. Case type

One can use data available from LSC’s website to determine the case types handled by each of the 129 grantees in graphs 1 and 2¹⁹. Case type is reported in ten categories: family, housing, consumer/finance, income maintenance, employment, education, juvenile, health, individual rights and miscellaneous²⁰. Eighty five percent of all cases fall into four categories: family, housing, consumer and income²¹. LSC grantees can be divided into five categories based on the largest and second largest categories of cases handled by each grantee, namely: 1) family, housing, 2) family, consumer, 3) housing, family, 4) housing, income, and 5) other. The data in graph 2 can be plotted verses these case type categories where the categories are numbered: 1) 5, 2) 10, 3) 15, 4) 20 and 5) 25, respectively. This is shown in graph 3 below.

¹⁹ See <http://www.lsc.gov/local-programs/program-profiles>. Although the data is for 2011, it is not likely to vary much from 2009 data, as the percentages of case type usually do not change dramatically from year to year. The percentage of family, housing, consumer and income cases were 35, 25, 12 and 13 in 2010 and 35, 25, 13 and 12 in 2009. LSC Fact Books for 2010 and 2009 at 23 and 15 respectively, supra notes 8 and 15.

²⁰ LSC Fact Book 2010 at 23, supra note 8.

²¹ See note 19 supra.



(Three outlier LSC grantees are omitted from this graph (15, 356), (15, 160), and (15, 168)).

The graph shows that results for programs that predominately handle family and housing cases (5 and 15) are similar to those that predominately handle housing and income cases (20), family and consumer cases (10) and other (25). Therefore these categories do not appear to significantly impact the average time spent on a case. It is possible that a particular case type could have an impact on average time spent, but it is unlikely as no case type constitutes more than 5.3 percent of all cases, except for divorce (13.4), custody/visitation (9.7), and landlord/tenant (14.1)²². The impact of these three case types should be apparent from graph 3 if these case types had a

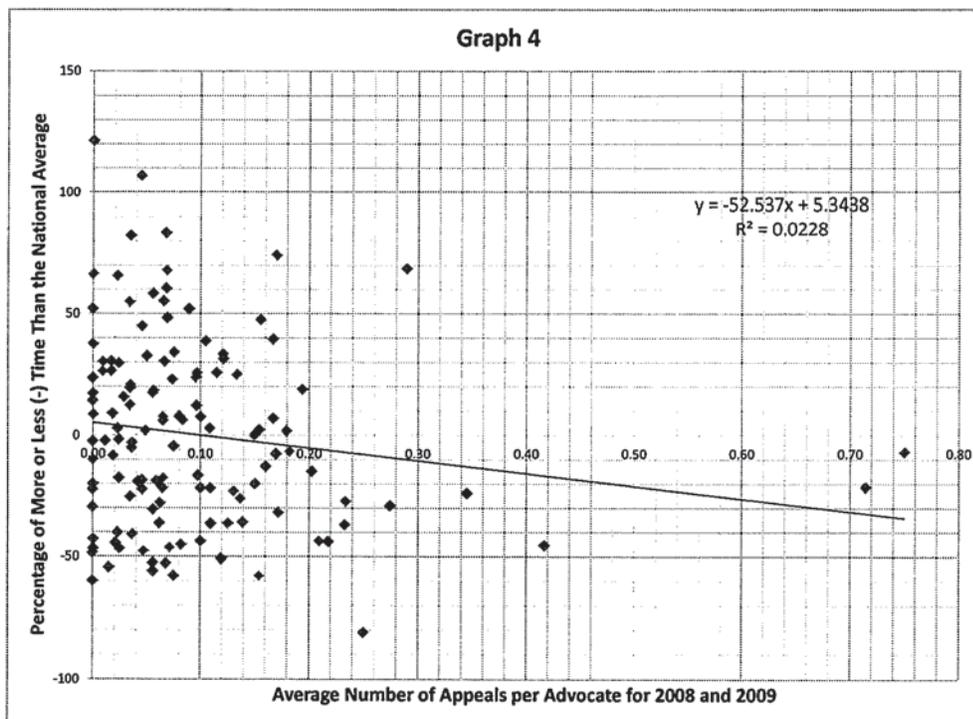
²² LSC Fact Book 2010 at 20-2, supra note 8.

significant influence. Thus, the complexity of services delivered rather than case type seems to be the reason certain cases take more time.

3. Number of appeals.

The number of appeals handled is likely to have an effect on the data, as programs that handle more appeals per advocate should average more time per case than those that do not.

Plotting the data in Graph 2 versus the average number of appeals per advocate for the period of 2008 and 2009 results in graph 4 below²³:



(Three outlier LSC grantees are omitted from this graph (0, 160), (0,168) and (0, 356))

²³ See LSC's response to author's request, supra note 13 and the 06/24/08 LSC response to author's Freedom of Information Act request for 2008 data (on file with author).

Surprisingly, there does not appear to be a significant correlation between the number of appeals per advocate and the average amount of time spent on a case. In fact, grantees with a high number of appeals per advocate spend less time than average on a case. As explained below, these programs may be so efficient that efficiency off-sets the effect of their time consuming appeals. Therefore, graph 4 suggests that reasons other than appeals explain the significant variations in the data.

4. Amount of services other than casework

Another factor is the amount of time program advocates spend on services other than the reported casework. The data in all of the above graphs assume that advocates spend all their time on the corresponding casework. Obviously this is not true, since advocates can spend over 25 percent of their time on other client services. NLADA believes a strong correlation exists between the percentage of funding that a program receives from LSC and the percentage of staff time devoted to casework²⁴. The reason given is that programs that receive substantial funding from other sources are likely to do more non-case activities such as community education, materials and website development, coalition building, community economic development, and other community advocacy²⁵. Also NLADA believes they are more likely to serve non-LSC eligible clients (e.g., moderate-income seniors) and provide assisted self-help services where it is difficult to screen clients for LSC eligibility, such as court-based self-help programs²⁶. Data on

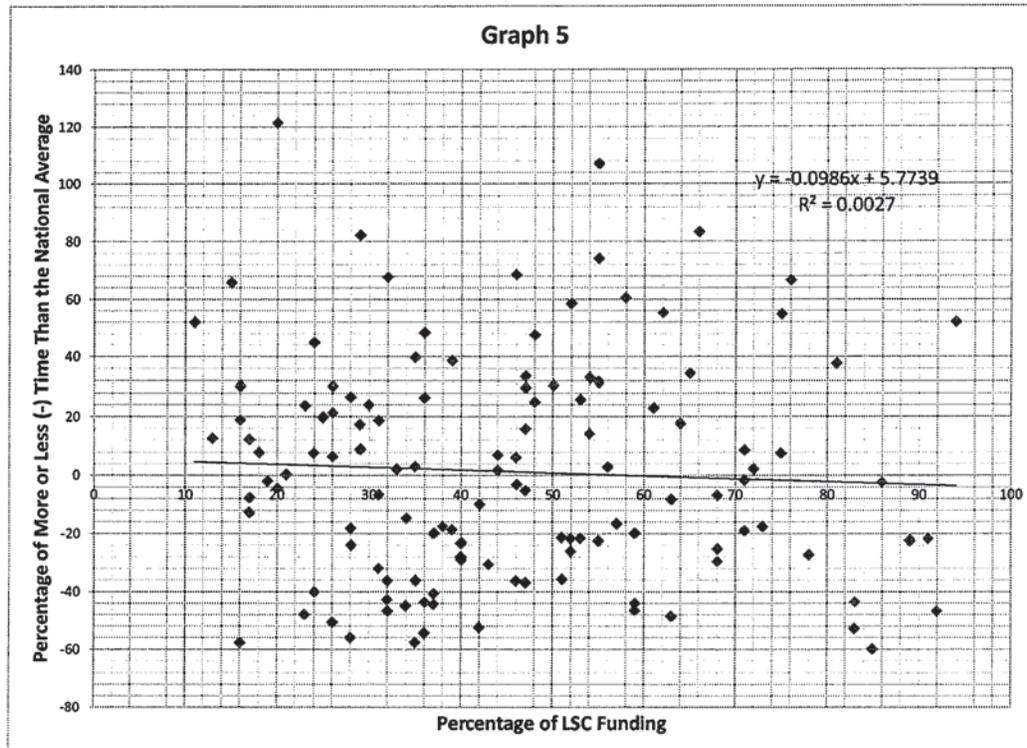
²⁴ NLADA, *Letter to Interested Persons*, April 27, 2011 at 2-4.

²⁵ Note that LSC programs are asked to include in their LSC case reports all the cases of LSC eligible clients that are funded by both LSC and others. LSC, *Case Service Report Handbook* at 2, *supra* note 11.

²⁶ If a client is not screened for LSC eligibility or is ineligible under LSC guidelines, the services provided to the client cannot be counted as a case under its guidelines. *Id.*

the percentage of LSC funding for 2009 is available for the 129 LSC grantees in graph 2²⁷.

Plotting the data in graph 2 versus the percentage of LSC funding results in graph 5 below.



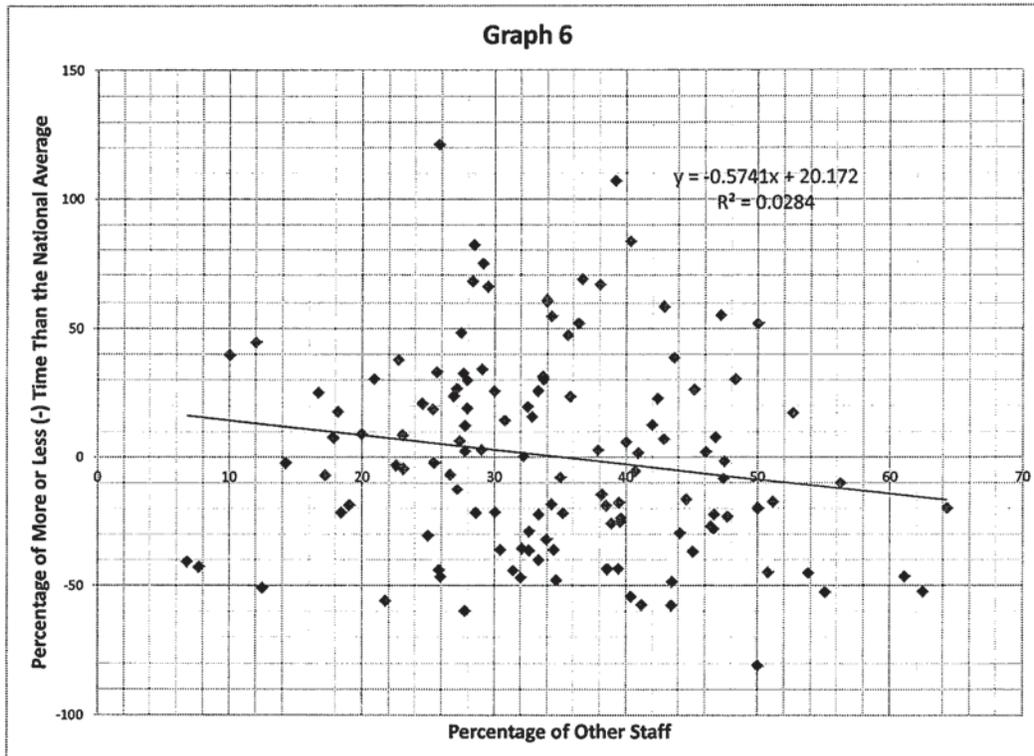
(Three outlier LSC grantees are omitted from this graph (18, 356), (48, 160), and (51, 168))

There does not seem to be a significant correlation between the average time spent on a case and the time spent on other services (reflected by the percentage of LSC funding). This implies that grantees with a high percentage of LSC funding provide as many non-case services as grantees with a lower percentage.

²⁷ See supra note 19.

5. Percentage of other staff

Advocates with more support staff are likely to close more cases annually. Plotting the data in graph 2 versus the percentage of staff other than attorneys and paralegals yields graph 6 below²⁸:



(Three outlier LSC grantees are omitted from this graph (39, 160), (36, 168) and (28, 356))

There appears to be a slight correlation between the percentage of other staff and the average amount of time that advocates spend on a case. Programs with a higher percentage of other staff tend to spend less time on a case. However, many programs are able to achieve the same low

²⁸ See LSC's response to author's request, supra note 13.

times with a much lower percentage of other staff. Thus the percentage of other staff is not a significant reason for the great diversity in the data.

6. Client type

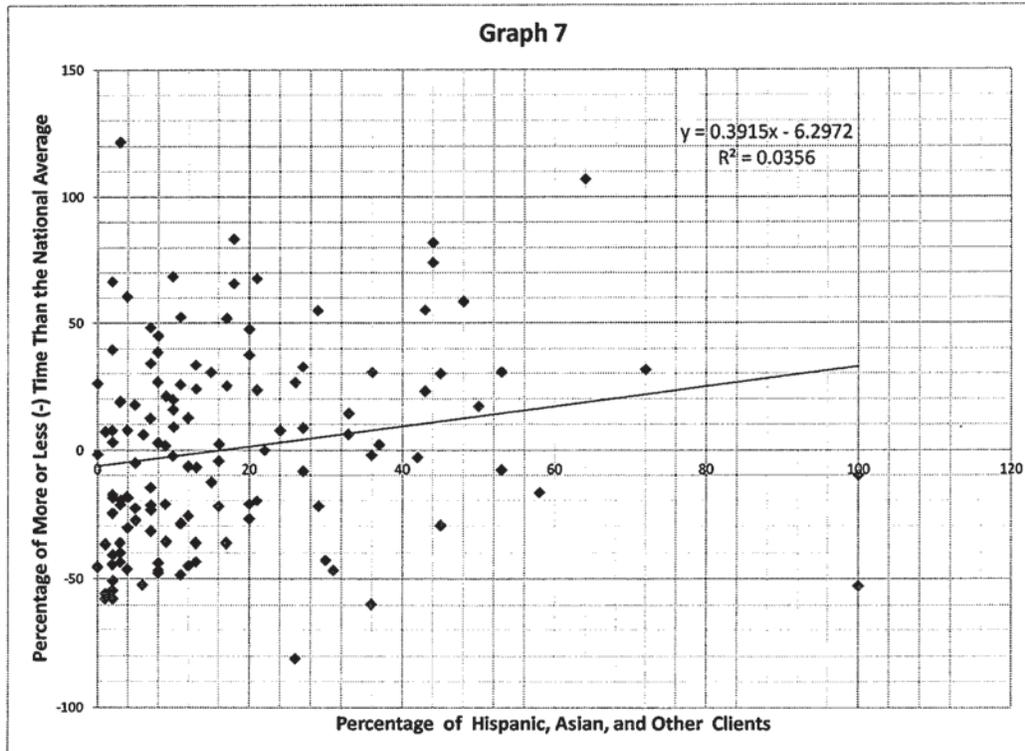
Client type is analyzed next, particularly those who have limited English speaking skills, as it typically requires more time to serve these clients²². The vast majority –77 percent – of people age five and older who speak a foreign language at home live in 11 states²³. One can use data available from LSC's website to determine the client types served by each of the 129 grantees in graph 2²⁴. The percentage of limited English proficient clients is approximated by determining the percentage of clients who are Hispanic, Asian or other²⁵. Plotting the data in graph 2 verses these percentages yields graph 7 below.

²² Paul M. Uyehara, *Opening Our Doors to Language-Minority Clients*, Clearinghouse Review 544, 554 (March-April 2003).

²³ These states are Arizona, New York, Texas, Florida, Illinois, New Jersey, Georgia, Massachusetts, Pennsylvania, Washington, and California. U S Census Bureau, *Language Use in the United States: 2007*, April 2010 at <http://www.census.gov/prod/2010pubs/acs-12.pdf>.

²⁴ See supra note 19. This is 2011 data but should not be significantly different than 2009 data, as client type does not change appreciably over time. The percentage of Hispanic, Asian and other staff served by all LSC grantees was 20, 1.9, 4.3 in 2009 and 18.7, 2.1, 3.9 in 2010. LSC Fact Book 2009 at 18, supra note 15 and LSC Fact Book 2010 at 26, supra note 8.

²⁵ Other is all clients other than Hispanic, White, African American, Native American, and Asian/Pacific.



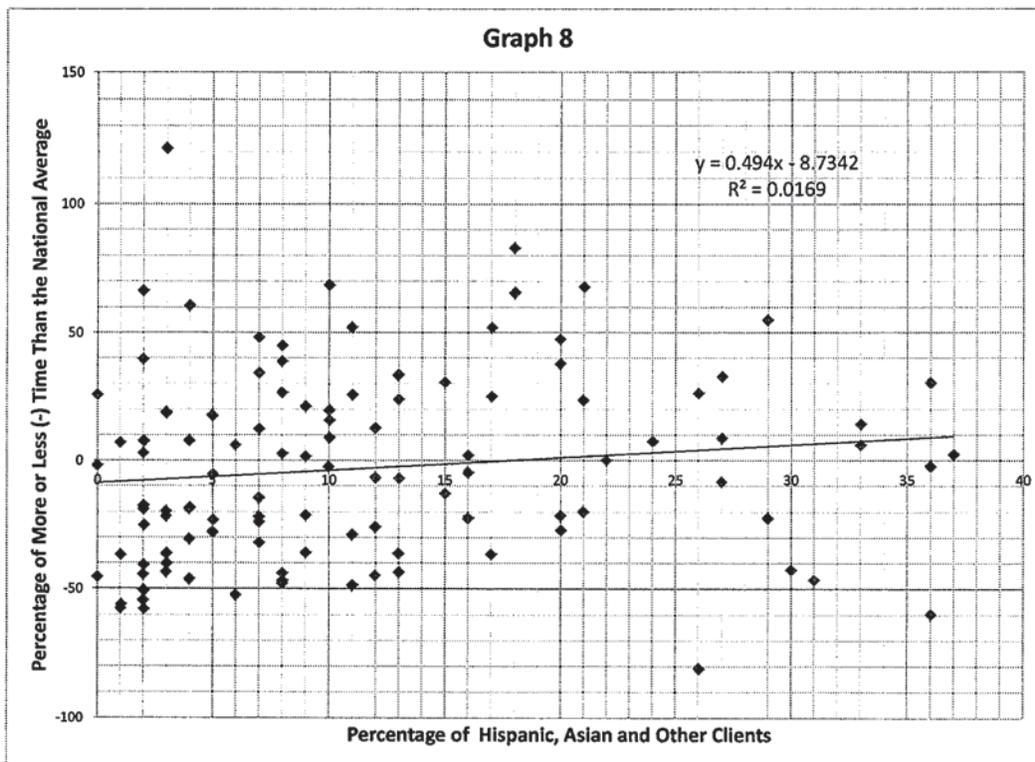
(Three outlier LSC grantees are omitted from this graph (28, 356), (4, 160) and (65, 168))

As expected, limited English speaking clients take longer to serve, but this still does not explain the great diversity in the data.

7. Efficiency

In summary, the average time spent on a case is significantly affected by the complexity of the services provided and the types of clients served, but not case type, number of appeals per advocate, percentage of other staff or the amount of time spent on non-case services. Thus efficiency remains as the most likely additional reason for programs doing more with less. To assess the impact of efficiency, one needs to remove the effect of service complexity and client type from the data. In graph 1, the complexity of the services provided by programs appearing

below the sloping line is comparable to the complexity of the services provided by those above the line. This means that the same is true of programs that appear above and below the x axis in graphs 2 through 6. Thus the difference in the average time spent on a case between the two groups must be based on client type and efficiency. But the effect of client type can be minimized by omitting programs from graph 6 where more than 40 percent of their clients have limited English speaking skills as shown in graph 8 below.



(Two outlier LSC grantees are also omitted from this graph (28, 356) and (4, 160))

This demonstrates that efficiency alone accounts for the differences between the group of programs above the x axis and the group below it. In other words, technology, methods, and/or systems can make a huge difference in amount of services delivered. If these efficiencies were more widely adopted, the existing level of funding could support services to many more people. I have served on teams that have evaluated two of the grantees that fall at the bottom of graph 1 (and the top of graph 2). As described in more detail below, both grantees had notable inefficiencies. They both had inefficient intake systems and one of them had a policy that limited caseloads to 10 to 15 open, active cases; advocates did not accept additional extended services cases until some of these active cases were closed. Advocates in the two programs did not use document generators to produce pleadings and other documents. Neither program used unbundled services to the extent possible, although the ethics codes allowed them. One program had central intake, but not enough intake staff, creating a bottleneck that resulted in a lot of down time for hotline advocates. The other program did not use centralized intake. Neither program used quantity/quality committees. Both programs used case acceptance meetings for intake. Both programs did operate hotlines for advice cases, but many advice cases were not handled by their hotlines. I could not determine the effect these inefficiencies had on the programs' overall performance until I later developed the above data analysis. This is why measurements are so important.

Ironically our evaluation team gave one of these programs a very positive evaluation and the other an overall positive evaluation. There were two reasons for this: First, efficiency is just one component of overall program performance. Other components include fundraising, leadership, financial management, community impact etc. Thus, a program that excels in these other areas, but is inefficient, can still merit an overall positive evaluation. The second reason is that the

evaluation methodology we used and is still used today does not assess such factors as efficiency, outcomes, or even quality. The current methodology primarily relies on interviews with program advocates, managers, and outsiders such as directors of social service agencies, bar leaders, and judges. In addition, some case files are reviewed to assess the quality of the representation. Yet this approach is likely to uncover problems only in the following areas:

- Quality of management
- Whether key practice systems and procedures are in place, such as conflict checking, litigation support, streamlined document production, financial systems for maintaining client trust accounts and collecting court fees from clients, research tools, timekeeping systems, case management software, technology (e.g., computers, printers, photocopiers, faxes, cell phones, PDAs, Internet access), case docketing systems, well-maintained case files, and recordkeeping and reporting systems needed to monitor cases. While the existence of these systems does not guarantee quality, quality is unlikely without them.
- Whether the program adheres to accepted practice standards such as those established by the American Bar Association and Legal Services Corporation.
- Whether case files are periodically reviewed by an experienced attorney and whether advocates receive ongoing feedback about their performance
- Whether advocates have access to and have received adequate training and professional development
- Whether client satisfaction surveys are positive and the program has not had excessive client complaints (although no data are available to allow comparison with national averages).
- Whether advocates are allowed to specialize, as evidence indicates that specialization improves quality.

In other words, we could determine whether a grantee had all the indices of a program that delivers good case services, but not substantiate this fact. While the case file reviews occasionally spotted problems with writing quality or legal strategies, valid conclusions could not be made about the program as a whole, as sample sizes were too small. One purpose of this article is to give evaluators better tools to do their jobs.

While the above analysis is not definitive proof that inefficiencies exist, it is sufficient to justify further inquiry about the reasons for differences in the data. In fact, measurements rarely prove that a problem exists. Their purpose is to identify potential problems that may not be detected otherwise. For example, the billable hour measurement is very important to large law firms. If this measurement is low for a first-year associate, further inquiry about the underlying reasons is warranted. However, if it is low for one of the firm's rainmakers, it does not raise concern.

Because the above measurements are not ideal, I recommend new ones in Section III.

Convincing programs to use the above analysis or a similar one to assess their efficiency will not be easy. Generally they are resistant to using reported data to spot these problems. Also there is not a culture of efficiency among legal services programs. In part, this is because the legal profession in general does not emphasize efficiency as most extended services are still billed on an hourly basis. Also funders of legal aid do not stress efficiency in their performance criteria, grant conditions or evaluations.

In contrast, prepaid legal services, which serve a high volume of clients with similar problems, are obsessed with efficiency through streamlined methods, technology and time-saving systems. Since they generally receive either fixed fees or a set price per member for their services, their income depends on their efficiency. Also the employers, unions and employees who pay for

these services are very cost conscious. Legal aid programs and their funders need to develop the culture that is prevalent in the prepaid industry.

8. Other data that reflect on efficiency

The ratio of managers to non-managing advocate staff can also effect efficiency. Consultants that advise city and county government law offices recommend that the ratio of management attorneys to non-management attorneys be no more than 0.10 to 0.15²⁶. In contrast, the average ratio of management attorneys to non-management attorneys and paralegals for all LSC grantees in 2010 was 0.25²⁷. While time spent managing volunteers may account for some of this difference, program directors should calculate this ratio and determine if it can be reduced.

B. Methods that can improve efficiency

Much can be learned about efficiency by studying programs that occur below the x axis in graph 8. However, some efficiencies are well known. Two are discussed above: reduction of the ratio of managers to non-managing advocates, and reduction of the percentage of other staff. Others appear below.

1. Use of streamlined systems to handle cases

Advice

²⁶ See James Wilber, Altman Weil, *Best Practices of City and County Civil Law Offices* at http://www.altmanweil.com/dir_docs/resource/b0541231-be60-491b-96ab-c6f1d5e1b4c5_document.pdf.

²⁷ 1128 managing and supervising attorneys and 4553 staff attorneys and paralegals. LSC Fact Book 2010 at 35, supra note 8. See also Author's Book at 193.

Available data demonstrate that advice delivered by phone takes much less time than that delivered face to face, so the telephone should be used unless the client has special needs or complex documents²⁸. Research indicates that the outcomes of telephone advice services are as good as or better than those of face-to-face services²⁹. A rule of thumb in the prepaid legal services industry is that the average telephone advice call lasts less than 10 minutes³⁰. Hotlines that collect this information report averages between 7 and 15 minutes³¹. Time spent recording case notes and sending follow-up letters should not average more than 20 or 30 minutes using commercially available technology. Therefore, most advice-only cases should average less than one hour.

Longer averages may be the result of providing face-to-face services to too many clients, failure to use document generators and standardized paragraphs to record case notes and prepare follow-up letters, or failure to use good call management techniques.

By far the most efficient way to handle advice-only cases is a legal hotline³². This is not only due to the efficiency of the phone and addressing the client's matter upon the first contact with the program, but also to the efficiency of the technology, processes and the quality control system. A hotline advocate can close 1360 cases annually and refer 340 more cases to other parts of the program³³. This means advice cases take less than an hour to close³⁴. Some advocates close as

²⁸ Wayne Moore, *Limited Legal Advice and Services*, Maryland Bar Journal, Vol. XXXII, No.2 20 (March/April 1999).

²⁹ Community Legal Service, *Methods of Delivery, Telephone Advice Pilot: Evaluation Report 52* (Sept., 2003); Center for Policy Research, *The Hotline Outcomes Assessment Study: Final Report – Phase III 67* (Nov. 2002) at <http://www.nlada.org/DMS/Documents/1037903536.22/finalhlreport.pdf>.

³⁰ Author's conversation with John R. Wachsmann of Wachsmann and Associates, P.C., Englewood, Colorado, who serves five national and regional prepaid plans..

³¹ Author's Book at 125, supra note 34. See also Wayne Moore at 21, supra note 35.

³² Id at 117-33.

³³ Id at 123-126,

³⁴ See supra note 17. Assuming hotline advocates spend 1200 hours annually on cases, they average 53 minutes per case (1200/1360*60)

many as 2982 cases annually³⁵. Hotline advocates do not have to be in the same location (although this has some advantages), so a program can easily create a hotline by designating existing staff to receive incoming calls during certain hours each week. A centralized intake system can facilitate this process. If a program uses a hotline but the average time to close an advice case is higher than an hour, the program should improve the hotline's efficiency and ensure that it handles most advice cases instead of less specialized advocates.

Hotline advocates should periodically keep track of the time spent on the phone to identify those who need more training in call management skills. Advocates can reduce excessive non-call time by using standardized paragraphs to prepare case notes and follow-up letters and by minimizing call-backs.

Limited action

The average time spent on limited action cases should range between two and three hours. Some units that specialize in limited action cases only handle cases that require less than two hours of service³⁶, since these cases are limited to investigation, advice, and document preparation, but not negotiation or other forms of representation.

The most efficient way to handle many routine limited action cases is to dedicate specially trained staff and use document generators and streamlined procedures. For example, in debt cases where the client is judgment-proof, advocates can use document generators to prepare letters to creditors for the clients' signature and mailing, with supplemental self-help materials for further guidance (average two hours). Clients are provided addressed, stamped envelopes and are instructed to call the advocate if the problem persists. Higher averages are usually the result

³⁵ Elizabeth Shearer, *To Study Telephone Legal Advice Services*, Winston Churchill Memorial Trust of Australia 11 (2003); if they spent 1200 hours annually, they would average 24 minutes per case.

³⁶ Author's Book at 145, *supra* note 34.

of providing too many clients with face-to-face services, failure to use document generators, failure to use specially trained and dedicated advocates, or failure to use streamlined processes to handle routine cases.

Uncontested court cases

The average time spent on uncontested court cases should range between three and four hours if unbundled legal services are used. Court-based self-help centers average less than an hour on these cases³⁷. As discussed below, I provided unbundled services in case types commonly handled by legal aid programs and achieved these time averages over a three-year period.

Other extended services cases

The most cost-effective method for handling these cases is using volunteer attorneys. Therefore, volunteers should be used for extended services cases whenever possible.

2. Use of document generators

Using document generators instead of filling in forms, cutting and pasting, or drafting documents from scratch can substantially improve productivity. One prepaid legal services provider noted that its Boston advocates were less efficient than those in its Washington, D.C. office. The managing partner found that the Boston advocates were not using the firm's document generator to the extent possible; instead they were using fill-in forms and cut-and-paste. The Boston advocates were told (nicely) that if this wasn't corrected, they should look for other jobs³⁸. Subsequently the productivity of the Boston office matched that of the Washington

³⁷ Id at 158-61.

³⁸ Author's conversation with Paul K. Regan, head of Regan Associates Chartered, Boston, MA.

office. Commercial document generators are available to many legal services programs, sometimes at a discount³⁹.

3. Use of unbundled legal services

Most states allow lawyers to deliver unbundled legal services⁴⁰. These are services where a lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full-service representation. The lawyer performs only the agreed-upon tasks, rather than the whole “bundle,” and the client performs the remaining tasks on his or her own.

After retiring from AARP, I successfully engaged in a fee-for-service, unbundled law practice for three years serving low- and moderate-income people in DC, Maryland, and Virginia. I developed four criteria that I used to decide whether a case was appropriate for unbundled services: 1) abilities of the client (I didn't serve clients with mental disabilities, limited English speaking skills, or hectic lives where they could not be expected to represent themselves), 2) simplicity of proving the case (cases that can be proven with testimony or the submission of simple documents), 3) presence of an attorney for the opposing party (I usually only handled cases where opposing party was pro se, except in uncontested cases), and 4) whether the decision maker (e.g. judge) had little discretion (I usually only handled these cases).

Nonetheless, many court cases were amenable to unbundled services. I handled these cases as follows:

- Bankruptcy (Chapter 7, no-asset): While interviewing clients, I filled out most of the forms in pen (forms for pro se clients don't need to be typed); I then asked them to fill out forms F, I, and J and return them to me along with other documents. (Best Cases software has a feature

³⁹ See www.directlaw.com

⁴⁰ See http://www.americanbar.org/groups/delivery_legal_services/resources.html.

that allows all creditor and debt information from the three credit bureaus to be downloaded onto F forms, which then can be supplemented by the client). I reviewed the returned forms and documents over the phone with clients, made necessary changes to the petition using white-out, and mailed the client the complete package of forms with post-it notes indicating where to sign. I did not sign the forms. Clients filed the forms and represented themselves at hearings following my written and oral advice. They also represented themselves at hearings to allow the retention of a car. I served hundreds of clients in DC, MD and VA in this way and didn't encounter a problem; but if one does arise, attorneys can always enter their appearance in the case. Average time: three hours.

- Child support: I used document generation to complete all the required forms and prepared pro se subpoenas and other documents needed to obtain the opposing party's income and health insurance information. I also calculated the amount of child support that should be awarded using state formulas. Clients filed all the papers, arranged for service of process, and represented themselves at the hearing using the subpoenaed documents and papers proving their own income. I provided oral and written advice throughout the process. Average time: two to three hours.
- Enforcement of child support, alimony, and custody orders; visitation cases where a spouse was being denied visitation and no abuse was being alleged; and cases seeking reasonable changes to child support or visitation orders: I handled these the same way as child support cases. Average time two to three hours.
- Domestic abuse – temporary protective orders: Although I did not handle these cases, court staff and others successfully use unbundled services by preparing pleadings and affidavits

and informing clients on how proceed pro se⁴¹. The client can then be referred to social services for additional help⁴², and the attorney can reenter the case as needed.

- SSA/SSI disability cases: These cases can be contracted to private practice attorneys by paying them the difference between an agreed-upon flat fee and the payment they receive from SSA, if necessary. The cost is usually much less than having program staff handle these cases. This allows the program to handle other cases where alternative representation is not available.
- Unemployment compensation: There is evidence that these cases can be handled pro se with advice and document preparation assistance⁴³.
- Landlord/tenant cases with no defenses: In some states pro se clients who have been coached can obtain as much time to move out as those who are represented⁴⁴. (Clients with defenses must receive full representation; even representation during negotiation isn't very effective unless the attorney is willing to proceed to trial).
- Contested divorce: I even handled some contested divorce cases where the other side was represented by a lawyer. I prepared my client's court pleadings and a draft separation agreement favorable to my client, which could be used as a starting point in my client's negotiations with his or her spouse. I told my client not to talk to the opposing attorney but to speak only to the spouse. I would help the client through the discovery process by preparing interrogatories, motions, requests for documents, and pro se subpoenas. By this time, the opposing spouse's legal bills had usually reached \$5000 to \$8,000, whereas my client had

⁴¹ See, for example, <http://www.dccourts.gov/dccourts/superior/dv/index.jsp>.

⁴² Social workers are better trained than lawyers to handle clients' safety and other issues.

⁴³ See D. James Greiner & Cassandra Wolos Pattanayak, *What Difference Representation? Offers, Actual Use, and the Need for Randomization*, Yale Law Journal, Vol. 121, 2011 at <http://biolawgy.files.wordpress.com/2011/03/what-difference-representation.pdf>

⁴⁴ Norman Janes, *Statewide Legal Services of Connecticut, Inc., Pro Se Eviction Outcome Study*, AARP Legal Hotline Quarterly 6 (Summer 2004).

spent less than \$1000. This difference in fees often caused the opposing spouse to agree to settle the case with guidance from his or her counsel. I advised my client throughout the process, but didn't sign any pleadings or talk to the opposing counsel or anyone else.

Programs should calculate the average number of hours billed to the above case types, if the averages are significantly above two to four hours, consider the above approach.

These cases should be monitored until conclusion to ensure clients obtain their objectives. The attorney can enter an appearance in the case whenever necessary. Sometimes the advocate can also reopen or appeal cases with unfavorable outcomes. Furthermore, programs can use outcome information to develop better protocols for screening out cases that are inappropriate for unbundled services.

Note that I was able to engage in unbundled services in Virginia even though its courts and ethics codes do not specifically authorize unbundled practices. This was because the courts I dealt with allowed the ghostwriting of court pleadings without disclosure of the name of the drafting attorney.

4. Use of streamlined intake systems

The cost of intake can represent up to 25 percent of the cost of an extended services case and 50 percent of the cost of an advice or limited action case⁴⁵. Inefficient intake is a common source of lower productivity.

For maximum efficiency, a client should interact with only two people before he or she is accepted (or rejected) for services. One interaction is required to screen for eligibility, because LSC grantees have complicated eligibility and documentation criteria. The second contact should

⁴⁵ Author's Book at 34, *supra* note 34.

be able to accept the client for services, and, preferably, be able to close most cases requiring only advice or limited action, as these are the majority of cases closed⁴⁶. In a few circumstances, the second person should provisionally accept cases for representation, such as clients sent to the pro bono unit where a volunteer may not be available.

Many programs still use case review meetings to screen cases⁴⁷. These meetings can use over seven percent of advocates' annual billable hours and delay the commencement of service by more than a week⁵⁵. These meetings should be eliminated. The training and camaraderie benefits can be provided at much less expense using other methods. If telephone intake occurs at more than one office or unit within a program, centralizing it at one of these points is more efficient. Information and referral services find that decentralized intake costs around \$16.35 per call, while centralized intake averages about \$5.20 per call as a result of economies of scale and more efficient use of staff⁴⁸.

Centralized intake staff can more easily use protocols to ensure that cases are handled efficiently. They can refer all cases likely to need advice-only to a hotline, if the program has one. They can schedule appropriate clients for the next pro se clinic; refer certain high-volume, routine cases directly to a staff member who specializes in them; and send cases appropriate for volunteers to

⁴⁶ LSC Fact Book 2010 at 19, *supra* note 8.

⁴⁷ These meetings usually occur weekly or sometimes bi-weekly and include most of the advocates working in an office or unit. These advocates spend two to four hours discussing the facts of each case, the issues involved, and whether it should be accepted for representation. Over half the cases are not accepted. Programs support this practice by saying that it is a good way to spot issues that individual advocates might miss and to brainstorm strategies; they say it also builds camaraderie and serves as continuing legal education for less experienced attorneys.

⁵⁵ Author's Book at 83-4, *supra* note 34.

⁴⁸ Dan O'Shea, Christopher King, et al, *National Benefit/Cost Analysis of Three Digit-Accessed Telephone Information and Referral Services*, University of Texas at Austin 16 (Dec 2004) at <http://www.utexas.edu/research/cshr/pubs/pdf/211costanalysis.pdf>.

the pro bono unit, thereby helping to utilize all available volunteers. Cases likely to require complex services can be referred to the appropriate manager for assignment to staff or a referral back to intake to decline representation. These processes minimize steps and send cases to the most efficient case handler.

The intake system is the first and often only contact a client has with a program, since most intake systems turn away more eligible people than they accept⁴⁹. Centralized systems can be better managed to make sure that rejected clients are not reluctant to use services in the future and their friends and neighbors aren't discouraged from calling at all. They can also better maintain accurate lists of referral agencies and their eligibility and contact information.

Clients with communication, emotional or mental health problems; certain farm workers, Native Americans and people with limited English proficiency; and others with special needs will require a more expensive intake system⁵⁰. But the needs of a few shouldn't be a reason for all clients to receive more expensive intake processing.

Some programs receive cases through informal intake processes, as when an advocate receives a call from a prior client. It is best to eliminate these processes, because such cases rarely utilize the least expensive delivery system.

5. Use of group services

Delivering some services to groups rather than individuals can be more efficient.

Programs provide pro se workshops in a variety of issue areas, including family law, housing, consumer, bankruptcy, guardianship, employment, special education, criminal record

⁴⁹ Legal Services Corporation, Documenting the Justice Gap in America 4 (Sep. 2005) at <http://www.lsc.gov/justicegap.pdf>

⁵⁰ Community Legal Service at 20, *supra* note 36. Note that hotlines have been successfully used to serve limited English speaking populations. See National Asian Pacific American Bar Association, *Increasing Access to Justice for Limited English Proficient Asian Pacific Americans* 46-7 (Mar. 2007).

expungement, advance directives, and driver's license renewals⁵¹. It is essential that programs monitor these cases until conclusion to ensure that clients obtain their objectives⁵². Also, one should be mindful that unbundled services can sometimes consume less time per case and with better results than group services.

6. Use of quality and quantity committee

A number of programs have enhanced the quality and quantity of services by creating a central committee that focuses on quality and best practices and sets quantitative goals for advocate staff⁵³.

II. Effectiveness

Evidence suggests that some legal services programs could be more effective, based on the following definition.

A. Definition of effectiveness

Case outcomes are one component of effectiveness. These are what clients want and advocates strive to achieve. Another component is value added. This means providing only the services the client needs. If programs provide more services than needed, other clients go unserved. If programs provide fewer services, desired outcomes may not be achieved and the services largely wasted. The third component is providing services that low-income clients are least likely to find elsewhere⁵⁴. Since legal services are usually the resource of last resort, they

⁵¹ AARP Foundation, Pro Se Legal Services Directory (May 2002).

⁵² Proper monitoring can increase case completion rates from 15 to 25 percent to 80 to 88 percent. Gabriel Hammond, *Tides of Change: Access to Justice Programs in Hawaii*, Management Information Exchange Journal 47, 49-50 (Summer 2000).

⁵³ Jeanne Charn, *Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs*, 20-7 at www.mbf.org/JAGWG5QualityAssuranceattheProviderLevel.pdf

⁵⁴ See supra note 12.

should focus on services unavailable elsewhere. The fourth component is handling case types that are the highest priority based on local needs assessments.

This definition of effectiveness is well suited to legal services for low-income clients, as clients can often achieve favorable outcomes without receiving full representation. For example, a detailed study of telephone legal advice found that advice alone can help low-income clients obtain favorable outcomes for many types of legal matters⁵⁵. Court-based self-help programs provide legal information and assistance with drafting documents, which help many clients obtain favorable court decisions, particularly in uncontested cases⁵⁶. Of course, clients need full representation in some matters. Maximizing effectiveness is different from maximizing the number of clients served, which primarily involves providing advice and limited action.

B. Evidence that some programs can improve effectiveness:

1. Cases that warrant a right to free counsel

The services most critical to low-income clients involve cases that are so important that advocates believe they justify a right to free counsel. The ABA has identified these cases to include “adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health, or child custody, as determined by each jurisdiction”⁵⁷.

⁵⁵ The 2002 Hotline Outcomes Assessment Study found that in cases involving a dispute with a private party, 59 percent were resolved favorably based on legal advice alone. The same was true for cases requiring court action where 46 percent were favorably resolved with advice only. In cases requiring an agency decision, 33 percent were favorably resolved. Center for Policy Research at 43, *supra* note 36.

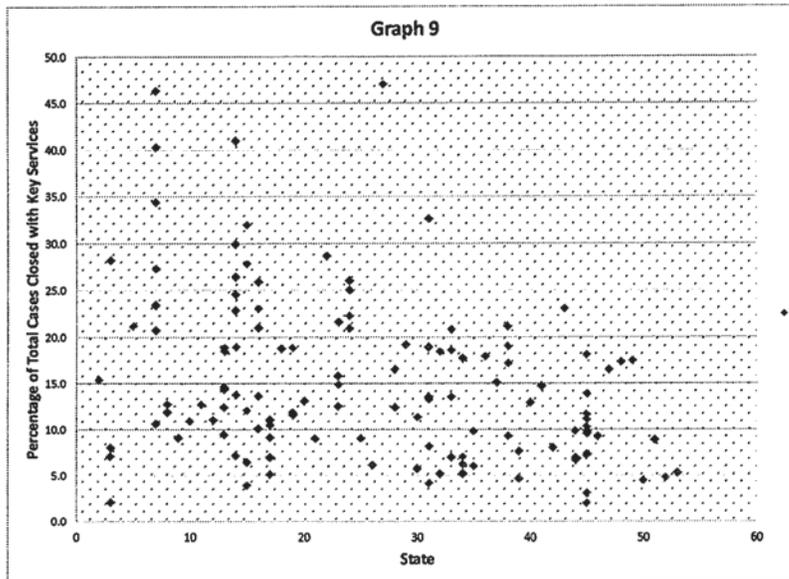
⁵⁶ See *supra* note 12.

⁵⁷ American Bar Association, *Basic Principles of a Right to Counsel in Civil Legal Proceedings*, August, 2010 at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf.

California describes these cases as “matters involving critical issues affecting basic human needs”⁵⁸.

These “right to counsel” cases, by their nature, require settlement with or without court involvement, an administrative agency decision, or a court decision in a contested case (i.e., key services). They generally cannot be resolved by counsel & advice, limited action, or uncontested court decisions. Yet for some programs these four complex services make up a small percentage of their cases, while other programs handle a high percentage of them. This is shown in graph 9 below, which includes all LSC grantees for 2009 except for those that serve only Native Americans, Guam, and Micronesia. The five grantees that are basically hotlines are also not included as they generally don’t provide key services.

⁵⁸ Sargent Shriver Civil Counsel Act (California AB 590) at http://brennan.3cdn.net/bc0ba4fe66e59bb83c_o0m6bx98c.pdf.



This graph shows the percentage of key services for each program in a state where states are numbered from 1 to 53, including the District of Columbia, Puerto Rico, and Virgin Islands. It is hard for a program to justify a low percentage as surveys find that only about 20 percent of the need is being met⁵⁹ and programs typically turn away more than 50 percent of eligible clients who contact them⁶⁰. Thus, some programs should handle more “right to counsel” cases.

2. Cases provided partial services when more extended cases are needed

⁵⁹ Robert Echols, *State Legal Needs Studies Point to “Justice Gap*, ABA Dialogue 32, 33 (Summer 2005) at <http://www.nlada.org/DMS/Documents/1125689452.32/Dialogue.pdf>.

⁶⁰ Legal Services Corporation at 4, *supra* note 57.

A report by LSC states: “LSC grantees were asked to capture the number of clients that they assisted in a limited fashion where full extended representation would have been more likely to enable the client to obtain a satisfactory outcome. LSC grantees counted 76,000 such cases in the two-month period. This figure does not include cases where the programs judged that the advice and brief service provided was sufficient to resolve the problem presented. Programs estimated that, during the two-month study period, 54,000 cases were resolved in this manner.⁶¹” Extended representation was not provided because of a lack of resources. Handling a certain number of these cases is inevitable, because the services required for a particular problem are not always clear during intake. A case accepted for brief services may turn out to need extended services that are not available. But when these cases can be identified at intake, effectiveness would be enhanced if these cases were rejected in favor of cases where all necessary services can be provided.

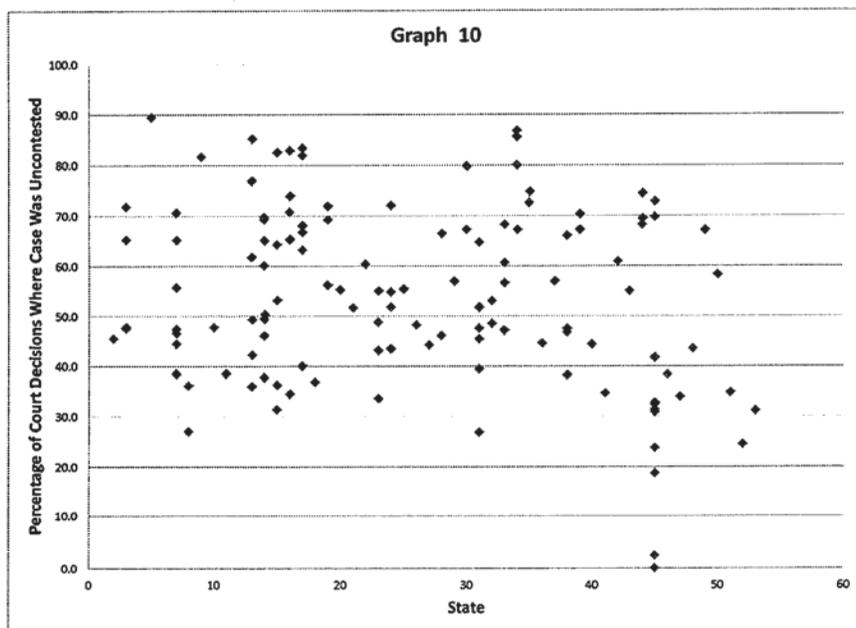
3. Uncontested cases

Fifty-seven percent of fully represented clients who obtain court decisions have uncontested cases⁶². Nevertheless, experience with court-based self-help centers and unbundled services indicates that many of these cases can be handled with advice and document preparation where the clients represent themselves in court⁶³. This would free up time that could be spent on other cases and make programs more effective. Graph 10 below shows this percentage for all LSC grantees in 2009 except for those that serve only Native Americans, Guam, and Micronesia and the five hotline grantees.

⁶¹ Legal Services Corporation at 10 fn 8, Id.

⁶² LSC Fact Book 2010 at 19, supra note 8.

⁶³ See Section I.B.3.



4. Volunteer lawyers

The vast majority of programs do not use all their recruited volunteer lawyers every year⁶⁴, mainly because they don't always have cases that correspond to the expertise or interest of these lawyers. Nevertheless, using all recruited volunteer lawyers should be possible, since programs turn away over 50 percent of the eligible clients who contact them⁶⁵.

⁶⁴ Author's Book at 179, *supra* note 34.

⁶⁵ See LSC at 4, *supra* note 57.

Also, because of the cost of recruiting and training volunteer attorneys and screening and referring cases to them, it is much cheaper to use paid staff to close advice and limited action cases⁶⁶. As shown in table 1 below, about two-thirds of referred cases are of this briefer nature⁶⁷.

TABLE 1

Year	Advice	Limited Action	Referral after legal review	Withdrew	Negotiation, Court/Agency Decision or "Other"
2008	42.3%	22.3%	-	-	35.4%
2007	42.0%	21.6%	0.8%	3.5%	31.3%
2006	42.1%	18.3%	1.7%	4.2%	32.7%
2005	43.2%	18.1%	1.3%	4.4%	32.4%
2004	43.1%	17.9%	1.8%	4.8%	31.5%

Since the legal work is free, volunteers should be used for more complex cases whenever possible. In addition, programs need to develop better methods to ensure that nearly all volunteers accept cases annually⁶⁸.

5. Coordination of services

Legal services providers deliver a much broader array of services than does a typical small law firm, including advice, limited action, pro se workshops, assisted self-help, negotiation, representation at agency hearings, litigation, appeals, outreach, client education, materials and websites for use by clients and advocates, and impact advocacy. Impact advocacy

⁶⁶ Author's Book at 173, *supra* note 34.

⁶⁷ Data include closed cases of Judicare programs and contract attorneys as well; LSC does not report these data separately for pro bono attorneys. See LSC's 6/24/08 response to author's request, *supra* note 23.

⁶⁸ See Section II. C. 1.

itself can utilize many different approaches⁶⁹. Thus, to be more effective, providers need better tools to manage these services, because staff must carefully coordinate not only their work but also the timing of their work. The proven method for doing this is a work plan⁷⁰. Nevertheless, few programs use this management tool, although they would be more effective if they did.

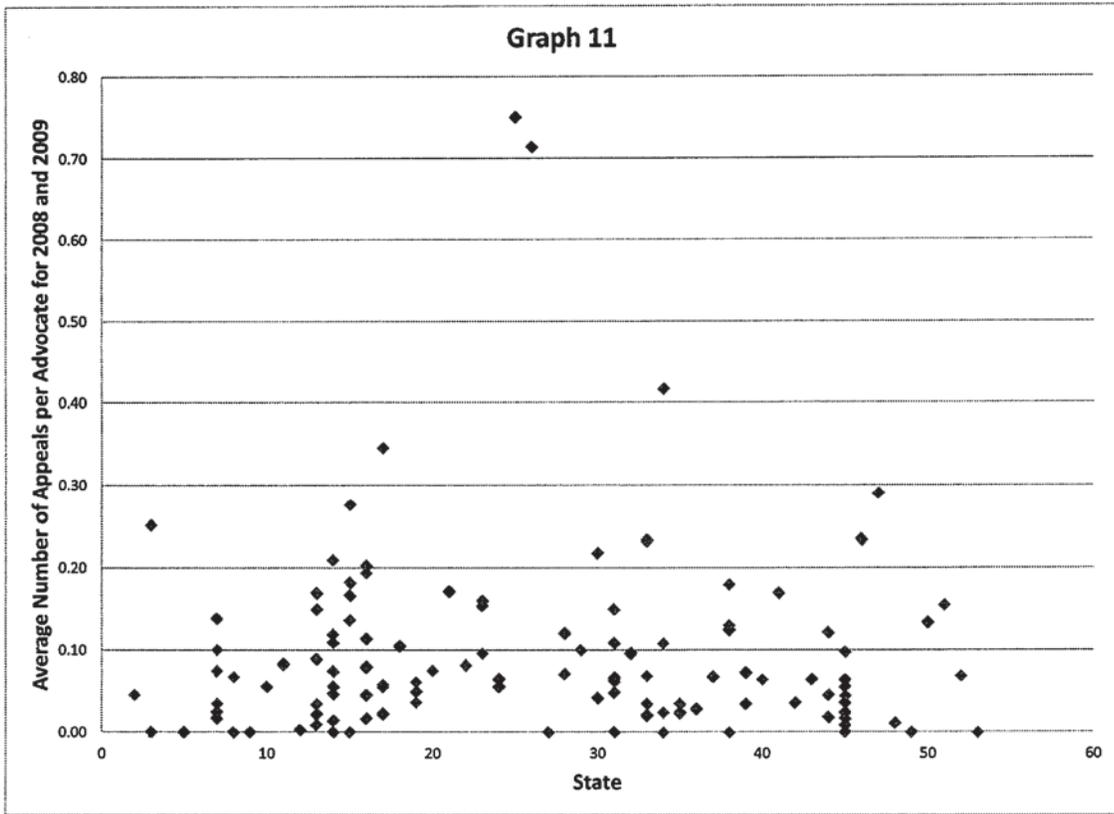
6. Litigation and court appeals

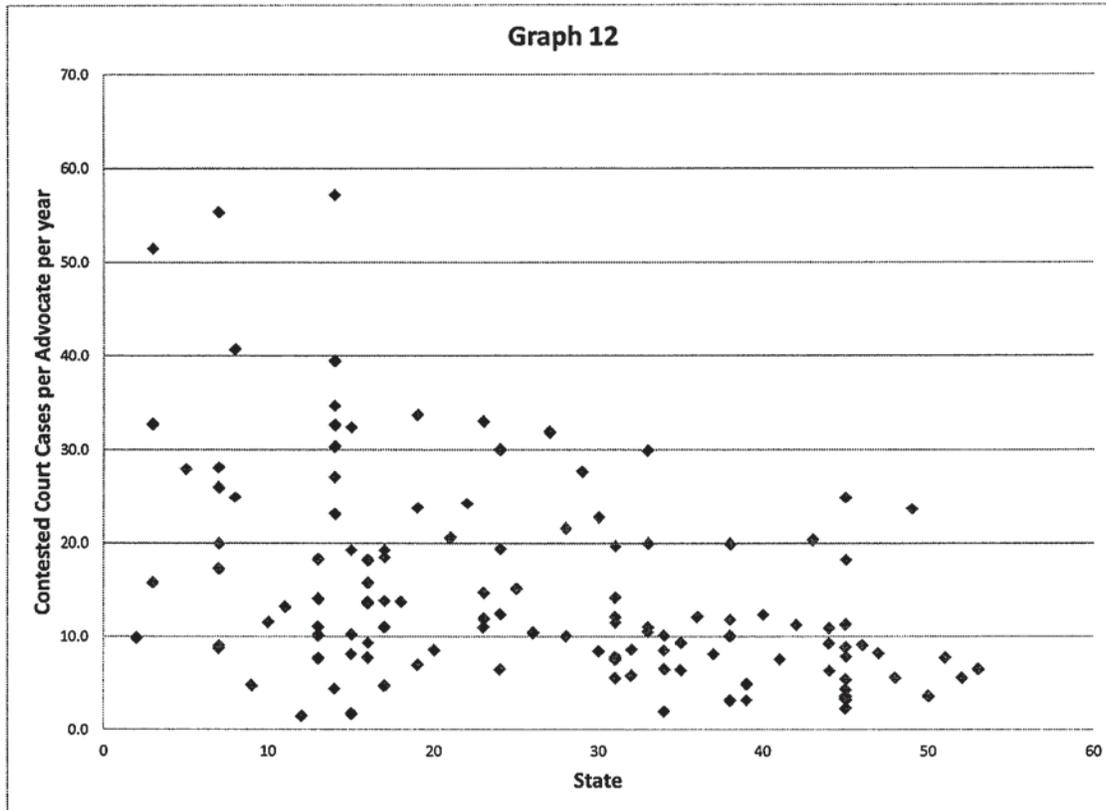
Contested litigation resolved by settlement or court decision and court appeals are the kinds of casework most likely to go beyond the parties represented to have a favorable impact on the low-income community. These are the cases most likely to set a precedent, prohibit an unfair business or government policy, or find that a law is unconstitutional, for example. Thus programs can be more effective if they handle more of these cases per advocate. Handling fewer of these cases can be justified if a program engages in other forms of advocacy that can positively affect the client community, such as community economic development and coalition building. Graphs 11 and 12 below show the average number of appeals per advocate over a two-year period (2008 and 2009) and the number contested litigation cases per advocate in 2009 for all LSC grantees other than those that serve only Native Americans, Guam, and Micronesia and the five legal hotline grantees⁷¹.

⁶⁹ Community economic development, building strategic alliances, group representation, individual test cases, investigation and research, fundraising, legislative advocacy, media exposés, rule making, changing court rules, policy advocacy, use of non-attorney volunteers and delivery system development.

⁷⁰ Legal Aid Society of Greater Cincinnati uses this approach very successfully.

⁷¹ See LSC's response to the two author's requests, *supra* note 23.





These data indicate that some programs could be more effective.

C. Methods that can improve effectiveness

Much can be learned about effectiveness by studying the programs that score well in Graphs 9 through 12. Several methods for improving effectiveness are described above, specifically: 1) handle more “right to counsel cases”, 2) use work plans, 3) minimize the number of cases that receive brief services when more extended services are needed, 4) reduce the

number of uncontested court cases that receive full representation, and 5) handle more contested court cases and appeals per advocate.

Other methods include the following:

1. Develop methods for using volunteer lawyers more effectively

As mentioned above, some programs need to increase the percentage of recruited volunteer attorneys who receive cases each year and the percentage that provide key services. One way to do this is to allow the pro bono unit to have the first choice of available cases rather than staff advocates, as is more common. Another method is to simplify the referral process and spend more resources on finding cases that match volunteers' expertise. This method uses an Internet-based scheduling system that allows volunteers to commit in advance (and change as needed) the types of cases they will accept and the months during which they will accept them. This commitment process should be a condition of participation. Staff can then refer cases without additional volunteer approval and devote more time to finding the right case mix through partnerships with libraries, social service agencies, and the courts.

2. Improve client satisfaction

Programs should conduct standardized client surveys using statistically valid methods so that results can be compared among programs. It is difficult to truly assess client satisfaction in a vacuum. Comparable data helps programs determine if improvement is needed. Programs could supplement these surveys with their own questions. These standardized questions could include: "What difference has legal aid made in your life?" (In one survey 55 percent said it made "a lot" and 13 percent said it made "much" difference⁷²); "Have your legal problems affected your

⁷² Wayne Moore, Making Self-Evaluation Part of Program Management, AARP 2 (2002).

health?” (Results have ranged between 17 and 51 percent⁷³); “How long did your problems persist before legal services addressed them?” (Many problems persist for years); “Did the legal services you received prevent other problems from occurring?” (Some problems, like domestic violence, trigger a host of others); “Did your situation change due to: a) the legal services received b) your own efforts or c) the matter resolving itself?” (This is to ensure a causal link between services and results); and “Did your problem get better, stay the same, or get worse?” Programs with deficient survey results can use the survey information to identify areas in need of improvement.

3. Have all program materials written for clients meet readability standards

Several websites can determine the reading level of material if it is cut and pasted into a web page⁷⁴. Some even identify words and phrases that are particularly problematic. Programs should process all materials through these websites to ensure a 5th grade reading level⁷⁵, and someone familiar with literacy issues should edit all materials. In my experience, conflict often occurs between a lawyer author and a non-lawyer editor because the lawyer seeks precision, which usually involves legal jargon, while the editor is trying to make the material understandable. If possible, lawyer authors should receive training in writing for low-literacy readers.

III. Measurements

⁷³ Jennifer Goldberg & Shawnielle Predeoux, Maryland Legal Aid Outcomes Survey, Maryland Legal Aid Bureau 4 (July 6, 2009); Pascoe Pleasence, Nigel Balmer, Alexy Buck, Aoife O’Grady, & Hazel Genn, *Civil Law Problems and Morbidity*, J.Epidemiol Community Health, Vol 58 552 (2004).

⁷⁴ There are several calculators in one at <https://sites.google.com/a/lawny.org/plain-language-library/>, <http://www.standards-schmandards.com/exhibits/rix/>, and http://www.online-utility.org/english/readability_test_and_improve.jsp.

⁷⁵ Between 40 and 44 million people in the United States have only rudimentary literacy skills and are unable to understand written materials that require a basic reading proficiency. National Work Group on Literacy and Health, *Communicating with Patients Who Have Limited Literacy Skills*, Journal of Family Practice 4 (Feb. 1998).

In order to achieve greater efficiency and effectiveness, one must be able to measure them. These measurements should meet certain criteria:

- Record the outcomes of cases, as this describes how clients are helped;
- Allow the comparison of programs, because it is difficult to measure efficiency and effectiveness in a vacuum. Unless one knows what is achievable, it is hard to convince staff that improvements are needed;
- Measure time rather than cost. It is difficult to compare costs, as they vary with the local cost of living, they are difficult to standardize (the costs reported by one program might not include all the expenses counted by another), and lower costs do not always equate with better efficiency (a program that receives free space has a lower cost per case, but is not necessarily more productive).
- Use current data to the extent possible to minimize the burden of gathering new information.

A. Proposed new measurements for casework

I recommend the table of measurements below for cases closed annually:

TABLE of MEASUREMENTS

Case Type	Outcomes	Closure code	Average time spent (billable hours)	Other
Landlord/tenant	Eviction prevented	Counsel & advice	1	
		Limited action	2-3	

		Settled w/o litigation	10	
		Settled w/ litigation	18	
		Uncontested court decision	4	
		Contested court decision	25	
		Administrative agency decision	20	
	More time to vacate obtained			
		Counsel & advice	1	40 days
		Limited action	2-3	40 days
		Settled w/o litigation	10	60 days
		Etc.		

Most legal services programs can generate this table using available case management software. It requires only five data fields for each closed case. All LSC grantees and most other legal services providers already collect three of these using standardized codes: case type, case closure code, and billable hours. Many programs collect the fourth field, case outcomes, for all closure codes except advice and limited action; however, the codes are not standardized. The fifth, "other", field is optional.

The measurements in this table satisfy the aforesaid four criteria: They include outcomes and time instead of costs. They allow the comparison of programs, and programs already collect most of this data, as discussed below.

1. Case types

This describes the type of legal problem or matter experienced by the client (e.g. child custody). LSC has created codes for the most common legal problems and matters, and most other funders use them as well. As mentioned above, 14 codes cover 74 percent of all cases handled by LSC grantees.⁷⁶

2. Case outcomes

Codes have been developed for legal services clients' common case outcomes, but unfortunately, these have not been standardized for all programs. Many programs use a set of codes developed by Legal Action of Wisconsin, an LSC grantee. Examples include the following: obtained bankruptcy protection; obtained or maintained custody of children; obtained a protective order for a victim of domestic violence; and assisted with, obtained, preserved, or increased SSI/SSD benefits/rights.

These codes have a few limitations. They don't capture unsuccessful outcomes. Also, they gather little information that could guide improvement. For example, in cases of negotiating more time for tenants to vacate their premises, it would be helpful to know how much time they received, so that others could learn from those who obtained the best results. The codes also don't capture

⁷⁶ See LSC Fact Book 2010 at 20-2, *supra* note 8.

the amount of economic benefits clients obtain, which demonstrates the program's effect on the economy of the low-income community⁷⁷.

Currently, programs that collect case outcomes don't do so for advice and limited action cases. Programs really do themselves a disservice by not collecting this information, as demonstrated in footnote 63.

Using a statistically valid sample of advice and limited action cases will allow outcomes to be compared among similar programs, without causing the burden required to collect outcomes for all of these cases. Law students could inexpensively make call-backs to clients to collect this information.

3. Case closure codes

These codes describe the services provided by advocates in closed cases⁷⁸. Most non-LSC funded programs use these codes or an earlier version.

4. Average time spent (billable hours) by an advocate to close a case

This is the same as the "billable hour" metric commonly used by attorneys in private practice. This does not include time used for leave, administration, case review meetings and trainings, and similar activities. LSC regulations currently require grantees to record this time for each case and be able to aggregate it using its case management systems⁷⁹. But grantees are not required to report this information to LSC.

5. Other

⁷⁷ However, many programs do collect this information.

⁷⁸ See text accompanying note 8, *supra*.

⁷⁹ 45 CFR 1635.3 Timekeeping requirements.

The “other” column can be used to collect information for certain case types to guide future improvements. As discussed above, this can include the economic benefit obtained by the client or more detail about outcomes, such as whether a client receives a spouse’s pension benefits as part of the divorce or the amount and percentage of rent reduction in a warranty of habitability case. This information can be used to evaluate whether some advocacy strategies are more useful than others. During on-site evaluations, funders could also determine why one program in a state has better outcomes than others in the same state and identify best practices. In addition to this closed-case data, programs should continue to collect the following information:

- Total number of attorneys, paralegals and other staff employed by the program
- The percentage of available, recruited volunteer attorneys who accept new cases each year
- Total number of appeals closed during the year

Programs should also collect new data to create Table I and to calculate the ratio of managers to non-manager advocates.

The above table of measurements should be collected for the program as a whole as well as separately for each office and unit within the program. This will help spot problems that only occur in a part of the program. The table can also be used by managers to monitor their staff.

B. Measuring advocacy other than casework

The above data allow the evaluation of a program’s casework, but not its other services, including community education, materials and website development, matters, coalition building, community economic development, and other community advocacy. However an approach

developed by LSC for its Delivery System Study (DSS) can evaluate these other services⁸⁸. The DSS used on-site attorney teams to measure the impact of such services, defining impact as the achievement of relatively permanent improvements or avoidance of relatively permanent deteriorations in the legal rights or basic living conditions of significant segments of the eligible population. Experienced, trained attorneys collected information about each activity using semi-structured interviews with appropriate advocates. A panel of experts reviewed this information and assigned a score to each completed activity. Each judge rated six sets of 25 randomly selected impact reports for a total of 395. Three or four judges reviewed each set, and all 11 judges reviewed 27 of the reports to test the reliability of the scores and provide a means of adjusting scores for differences in judges' rating behavior. Scores for each of the program's advocacy activities were added and divided by the total cost of the program.

I propose using the same method, except that programs prepare and submit their own advocacy descriptions on a standardized form to save costs. Also, new projects should not be evaluated until they are completed or reach maturity (if they are intended to be ongoing) so the evaluations are based on results and not potential⁸⁹. Existing LSC evaluation staff could do the scoring. The evaluation should expand to include what LSC refers to as "matters"⁹⁰, or matters could be scored separately. The scores are not intended to be precise, but sufficient to group programs into tiers where successful programs can be identified for learning purposes and programs with poor scores can be targeted for technical assistance and training. Evaluators should send each program

⁸⁸ Legal Services Corporation, *The Delivery Systems Study: A Policy Report to the Congress and the President of the United States* (June 1980).

⁸⁹ The DSS evaluated new, ongoing and completed projects.

⁹⁰ Matters include referrals to other agencies or sources of assistance; provision of legal education or self-help materials in lieu of further legal assistance; mediation/alternative dispute resolution services; and the provision of court-based services by means of self-help centers or a help desk/kiosk. LSC, *Matters Service Report Guidelines for Data Collection and Reporting* (October, 2002) at <http://grants.lsc.gov/sites/default/files/Grants/MattersDataCollection10-02.pdf>.

the comments that form the basis of the scores with suggestions on how to improve their activities. The evaluators may want to score websites separately, as this might provide additional useful information.

C. How to use proposed metrics

The measurements can be used to identify inefficiencies and ineffectiveness as follows:

- Compare total average billable hours spent on each case closure code with national averages. Investigate significant variations from the norm to identify opportunities for improvement or best practices. For example, if a program's advice cases average two hours, improvements are warranted.
- Compare average billable hours for each case closure code for most common case types. Some prepaid legal services providers use this method to monitor all their advocates located in offices throughout multiple states⁹¹. For example, if uncontested court decisions for temporary restraining orders average more than three or four hours, remedial action may be necessary. If an advocate or office bills more time than average for a particular case type and closure code, supervisors should investigate and can often discover inefficiencies this way. Managers can use this information to monitor cases on an ongoing basis and intervene if a case seems to be taking too much time.
- Compare outcomes and average billable hours for certain case types: For five of the 14 most common case types handled by legal aid programs, outcomes and average billable hours should be comparable for every closure code among advocates and offices within the same program and even among programs in the same state and nationwide. They include bankruptcy/debtor relief, Medicaid, federally subsidized housing, Food Stamps,

⁹¹ UAW Legal Services Plan at <http://www.uawlsp.com/>.

and SSI, all of which involve certain federal laws and procedures. Average billable hours should also be comparable for wills/estates nationwide. For example, the average time to close an SSI case should be comparable for all advocates regardless of closure code (e.g., one hour for advice, 20 hours for an agency decision). Two of the 14 case types, mortgage foreclosures and unemployment compensation cases, should be comparable within a program and among programs in the same state. Significant differences among advocates, offices, or programs should be investigated further, and the practices of top performing programs and advocates shared with others.

- Compare outcomes for different case closure codes: This is useful for spotting case types where outcomes are similar among case closure codes. For example, if the amount of time negotiated for tenants to vacate their premises is comparable for advice-only cases and negotiations, the program may want to handle more of these cases with less time-consuming advice. Also one can conduct experiments with unbundled law to determine if the outcomes are comparable to full representation and adopt the unbundled approach wherever possible. This is particularly helpful for comparing outcomes of uncontested court and limited action cases.
- Compare “other” data for different closure codes and case types. These cases can be reviewed as described immediately above.
- Compare annual billable hours: Another way of comparing programs, units, and advocates is to calculate the average number of annual billable hours per advocate. Programs should also calculate the corresponding average number of hours billed to closed cases for each closure code (i.e., three hours for a closed limited action case). Programs, units, or advocates with a higher annual average of billable hours per advocate

are likely to be more productive. This is not true if the additional time, in the form of more hours per closure code, is being devoted to routine services, such as counsel and advice, limited action, and uncontested court cases.

- Compare the ratio of FTE managers to FTE non-management advocates with national averages, as described above.
- Compare percentage of FTE non-advocate staff to total staff with national averages, as described above.
- Compare the percentage of key services cases with national averages, as described above.
- Calculate the percentage of cases closed with extended services for all pro bono cases; this requires generating the above table of measurements for pro bono cases. Calculate the percentage of recruited volunteer attorneys who accept new cases each year, as described above. These calculations will help programs maximize these percentages.
- Compare the average number of appeals and litigated cases per advocate with national averages.

IV. CONCLUSION

A. What programs can do

Programs can calculate the data shown in the above graphs from data in their 2009 LSC annual report to compare their performance with other programs. They can also calculate the total average billable hours devoted to advice, limited action, and uncontested court cases. Finally, they can calculate the average annual billable hours per advocate.

1. Efficiency

Programs can use the graphs and other data discussed above to identify potential areas in need of improvement. They can then explore these areas using the appropriate questions below.

Outreach

- Do you have efficient methods for reaching clients with limited English proficiency and hard-to-serve clients?

Intake

- Do you match clients with the least expensive delivery system within the program that can address their problems (e.g., legal hotline, pro bono program)?
- Do you make referrals to other programs based on information that ensures they are successful? Do you measure the success?
- For each intake point within the program, what process do you use from the time the client first contacts the program until he or she is approved for services? How long does it take, from the time of initial contact with the program, for clients to learn whether they will be represented? Can this be shortened? Do the vast majority of clients, who receive advice-only or limited action, only interact with two staff? If not, can this be changed?
- Is intake centralized?
- Do you use case acceptance meetings?

Advice

- Do you resolve most cases requiring advice-only during the clients' first contact with your program? Do you handle most of these cases by telephone?
- Is technology available to help advocates quickly conduct conflict checks, record case notes, and generate follow-up letters to clients?

Limited action cases

- Does dedicated staff handle common, routine cases?
- Do they handle most of these cases entirely by phone?
- Do they use streamlined procedures and document generators to create all documents?
- Are cases monitored until conclusion?

Uncontested court cases

- Do you use unbundled services to resolve these cases, whenever possible?
- Do you use document generators for all documents?
- Do clients represent themselves at most court hearings?
- Are cases monitored until the court decision is made?

Staff attorneys and paralegals (advocates)

- Do attorneys and paralegals use document generators to prepare most documents?
- Do they use unbundled services whenever possible?

Supervision

- Do managers monitor the number of hours billed to cases on an ongoing basis and intervene when necessary?
- Do they monitor the age of cases, number of open cases, number of closed cases per month, and the percentage of key services?
- Do they use work plans?
- Do they periodically review best practices and quality control systems?

- Do they conduct statistically valid client satisfaction surveys?
- Do they ensure document generators and other technology are actually being used?
- Do they minimize the number of uncontested court cases that receive full representation?
- Do they ensure staff uses unbundled services whenever possible?
- Do they strive to create a paperless office?
- Do you use an efficient ratio of supervisors to non-supervisory advocates?
- Do you use an efficient percentage of staff other than attorneys and paralegals?

2. Effectiveness

Programs can use the above data in combination with the following questions to identify opportunities for improvement:

Outreach/Intake

- Do you have effective methods for reaching clients with limited English proficiency and hard-to-serve clients?
- Do you coordinate outreach with other program activities and objectives to achieve synergy?
- Do you conduct outreach at locations that primarily reach the same clients, or are they more diverse, including community events, festivals, churches, radio shows, public access TV, newspaper columns, etc?
- Is outreach proactive, targeted at underserved client communities, or is it reactive, based on requests from the community?
- Do you analyze your annual number of closed cases to determine how they are allocated geographically and by ethnicity, age, gender, and language? Do you compare these allocations to census data for the low-income population to determine if any local community or client group is underserved? If so, do you target outreach to these underserved client groups?
- Do you try to screen out cases requiring extended services when these services are not available? (See Section II.B.2.)

Advice

- Does advice generally produce expected, favorable outcomes for clients? When it does not, do you provide these cases with more services in the future?
- Do managers listen to a sample of telephone advice calls (with client consent) to determine if advocates give advice clearly and make sure clients understand it?
- Do advocates receive call management training?
- Are outcomes recorded for a statistically valid sample of advice and limited action cases?
- Do all materials given to clients meet readability standards?
- Do you use interpreters and translators for limited English speaking clients?

Limited action cases

- Do you monitor these cases to completion to ensure clients receive the expected outcomes?

Extended services cases

- Do advocates specialize?

- How many open cases do advocates have? How many are active? How do they control their caseloads?
- Are resources or expert staff available if staff advocates need help?
- Does staff receive the training they need? What training have they had recently?

Volunteer lawyers

- Do they handle extended services cases whenever possible?
- Do nearly all recruited volunteer attorneys accept at least one new case each year? If not, can this be corrected?
- Do you monitor the progress of their cases with periodic phone calls?

Supervision

- Do supervisors monitor each advocate's billable hours and average time spent on advice, limited action and uncontested court cases?
- Do they conduct statistically valid client satisfaction surveys?
- Do they evaluate staff annually and, if so, how is this done?
- Do they set goals regarding the quality of work done?
- Do they review all cases periodically? If so, how is this done and does it happen at least quarterly?
- Do they establish impact advocacy objectives, action steps, milestones, and measurements for all advocates?
- Do they compare outcomes with measurements for impact cases?
- Do they periodically review the quality of staff's significant casework, depositions, and agency and court hearings?
- Do you have a committee which oversees the quality and quantity of work done by the program?
- Is priority given to "right to counsel" cases, contested court cases and appeals?
- Are partnerships with other non-profits created to address client community problems? If so, are they formalized in writing? Have they created a strategic plan for creating change?

3. Follow-up

Inefficiencies identified by the data and confirmed through the answers to the questions can be corrected using some of the ideas in this paper or from other sources.

B. What funders can do

Funders tend to follow the lead of the Legal Services Corporation when it comes to performance criteria. LSC has established nine performance criteria for its grantees⁹². While they make occasional reference to efficiency, LSC needs to devote an entire, separate criterion to it. Each LSC criterion includes questions that help define its meaning, which is helpful for onsite evaluations because they provide a pool of questions for interviewing program staff. Above are some questions that could help define this new efficiency criterion.

While the LSC performance criteria reference effectiveness more often than efficiency, it should combine references into a separate criterion and expand it to include considerations raised by the above questions for effectiveness. These criteria will help change the current culture which does not give priority to efficiency and effectiveness.

LSC should also collect the measurements recommended in section III to better assess efficiency and effectiveness. This is particularly true of advocacy other than casework, which receives little attention now. However, the data in Sections I and II are adequate for identifying programs that should be evaluated first to determine if their performances can be improved, as well as those that appear to perform very well to learn the methods they use. The fact that these measurements can be improved doesn't mean that they can't be used, because measurements rarely provide definite proof that problems exist.

Measurements play an important role after an evaluation is completed to assess whether productivity and effectiveness have actually improved. At this time, LSC and other funders don't have good mechanisms for doing this. Evaluators can offer programs the suggested

⁹² LSC, Performance Criteria (March 2007) at http://www.legalaidnc.org/public/participate/legal_services_community/LSCPerformanceCriteriaReferencingABASstandards_2007edition.pdf

improvements outlined above, but funders don't have to be in the awkward position of imposing them as long as they insist that the measurements improve.

It is also critical that LSC support the concept of unbundled services and include it in its training programs, instructions and performance criteria. As discussed above, this has the potential to greatly expand existing services.

A few recommendations are so important that funders should consider raising them with programs. One is having each program establish a centralized, streamlined intake system. This is a common cause of inefficiency. Another is requiring the use of document generators, as the experience of prepaid providers suggests. Funders should also urge that volunteer lawyers be used more effectively by referring them more extended services cases. Also more existing volunteers should be used annually. Funders should ensure programs handle enough key services cases to avoid the claim they only provide Band-Aid services. And finally, the better performing programs should be evaluated and their methods shared.

C. Potential impact of improvements

One can estimate to what extent services can be expanded by determining the number of additional cases programs could handle if those below the sloping line in Graph 1 improved their performance to reach the line. This number is more than 218,000 or nearly 24 percent of the current total⁹³; the complexity of these new cases would be the same as existing ones. This would more than compensate for the 14 percent reduction in advocates for 2011 and 2012. If all

⁹³ One can calculate the total number of additional cases per advocate by: 1) using the formula $-4.1699x + 239$ to determine the total number of cases closed per advocate at the sloping line where x is the percentage of key services and 2) subtracting the current total number per advocate. For example, for one program the percentage is 27.4 and the current total number of closed cases per advocate is 66. The total at the sloping line is 125. Subtracting 66 from 125 yields 59. The total number of new cases can be determined by multiplying the total number of additional cases per advocate by the total number of advocates in the program. In this case it is 244 times 59 equaling 14,396 more cases.

programs used unbundled services to the extent possible, this increase would even be higher, since many programs above the sloping line do not use them.

Richard Sloane

From: Ann L. Routt <aroutt@lsscm.org>
Sent: Wednesday, July 11, 2012 5:17 PM
To: Richard Sloane
Cc: Mike Chielens
Subject: Correction - Comments - LSC Strategic Plan 2012-16
Attachments: LSC strategic plan comments 7-12.docx

Please disregard the earlier-emailed attachment. This is the correct version.

Dear Mr. Sloan,

Please find attached comments on the June 2012 Draft of the LSC Strategic Plan 2012-16, submitted on behalf of the Legal Services Association of Michigan.

Thank you for your attention to this matter.

Ann L. Routt
Co-chair, LSAM

--

Ann L. Routt
Deputy Director
Legal Services of South Central Michigan
420 N. Fourth Avenue
Ann Arbor, MI 48104
734-665-6181

To: LSC Board of Directors
From: Ann Routt and Mike Chielens, co-chairs, Legal Services Association of Michigan
RE: LSC Strategic Plan 2012-2016
Date: July 11, 2012

We are writing on behalf of the Legal Services Association of Michigan (LSAM). LSAM is a non-profit organization created in 1982; LSAM's membership is the 13 largest legal services providers in the state. Its members include all six LSC grantees and several non-LSC providers.

LSAM members have reviewed LSC's draft Strategic Plan. While we support the concept of the Plan—having published goals addresses our shared value of transparency—we are very concerned by what we see as a major change in LSC's role contemplated by the Plan. We are writing to comment on several recommendations in the Plan that we think would have negative effects on the national legal services community.

We urge you not to act on the Plan at the July LSC board meeting. Rather, we urge you to revise the Plan in light of these comments and to act on a modified plan document at a future meeting.

- 1. LSC's primary obligation to the nation and to the field is to increase federal funding for grantees.** This was a stated goal in the 2006 plan—it is not included in this plan.

From a grantee perspective, the importance of LSC funding to the overall legal services system cannot be overstated. This is the core funding stream that makes the whole system possible. LSC funding is the glue that holds the national legal services delivery system together. Any reduction in this funding ripples down and erodes the entire system. Due to the LSC funding cuts in 2011 and 2012, we are all experiencing this erosion at this time. Michigan has lost almost 20% of its LSC program staff over the past year.

The legal services delivery system desperately needs more LSC resources at this time. We understand that advocating for LSC funding increases in the current political environment is difficult and discouraging. However, this is the most important service that the LSC board and staff can perform for the nation. We urge you to make this the primary strategic goal of the Corporation.

- 2. The Role of the LSC.** We are very concerned that the overall Plan moves LSC away from its historical roles of funding and regulating its grantees and into a series of new initiatives and new services that will create a larger and less efficient administrative structure at LSC. We believe that this expanded administrative structure is unnecessary; further we feel that these efforts will undermine LSC's credibility with Congress and the field.

One of LSC's strengths for many years has been its lean administrative structure. There was a time when LSC could say that 97% of every federal dollar went to provide services in local communities. This was a very powerful message to Congress. Over time, LSC has continued to expand its centralized management structure—today about 92% of LSC funding goes to field grants and 8% supports administrative costs and LSC-managed discretionary grant programs.

The Plan represents further administrative expansion. The Plan identifies a number of new initiatives for LSC—all of which will expand LSC's discretionary administrative role at the expense of its historical grant management role. These new initiatives are more consistent with the mission of a nonprofit organization; they are inconsistent with a governmental agency charged with grant management, grantee oversight, and regulatory enforcement.

Two specific initiatives are discussed in Section 4 and Section 5 below. Our broader concern that cuts across all these new initiatives is that LSC's new roles are inappropriate for a governmental agency; will limit LSC's effectiveness in performing its governmental functions; and will undermine its grantees' efforts to provide services to their clients.

3. **Performance Management Systems.** At pages 6-7 of the draft Plan, LSC discusses implementing "outcome metrics", "efficiency metrics", and "performance triggers".

On the one hand, we recognize the benefit of outcomes reporting. LSAM members have been experimenting with outcome measurement systems since at least 2005. As part of a statewide collaborative foreclosure grant, all the LSC field programs began reporting using one outcome reporting system (connected to the LSC CSR system) in 2009. We understand that such a system can be created and that such a system can be a powerful tool in explaining the value of legal services to funders and to the public.

So while we support outcome reporting systems, we urge LSC to approach this project as a partnership with the field. We have looked at a number of outcome systems—and we have seen several that are very significant drains on program resources; we have seen others that, in our opinion, tell the wrong stories. The need for study and testing and flexibility in this area cannot be over-emphasized. Outcomes need to be designed to benefit individual programs in achieving their goals and avoid comparing programs with each other for evaluation purposes. Also, we urge LSC to be cognizant of the need for testing, training, and phase in before implementing a new program. Unless all advocates understand the system and are applying the categories consistently, the system will not be effective.

While we support outcome measurement, we would advise against "efficiency metrics" and against financial awards for "high performing" programs. We're not aware of any credible efficiency metrics in legal services delivery. Imperfectly drawn metrics could skew the outcome reporting system (by discouraging the reporting of negative outcomes) and could discourage programs from engaging in community impact work and/or from accepting difficult cases.

For the reasons stated in #1 and #2 above, we oppose an LSC-administered “financial rewards” system—such a system would expand LSC’s administrative structure and would further politicize the LSC-grantee relationship.

4. **Grantee Training.** At page 8-9 of the draft Plan, LSC suggests that it will dramatically expand its training capacity to add “best practice training”, “peer support and collaboration programs” and “management support”. We oppose LSC’s expansion of its work in providing training and support services.

LSAM’s members are committed to providing quality training and support to their staff and to accessing such support for their programs. The training and support resources available in Michigan are among the best in the nation. They include the Michigan Poverty Law Program, the Michigan state support program created in 1997 as a joint project between Legal Services of South Central Michigan and the University of Michigan Law School. In 1982, the Michigan programs (along with colleagues from other states) created the Committee on Regional Training (CORT) a multi-state consortium that provides skills-based, substantive law, and management trainings.¹ Despite this strong commitment to training and support, we oppose these LSC initiatives for several reasons.

First, there are other entities already providing national training services—the National Legal Aid and Defender Association (NLADA) already provides training and peer support services; one of NLADA’s most important annual trainings is the Equal Justice Conference, which is co-sponsored by the American Bar Association; almost all LSAM members are members of the Management Information Exchange (MIE) which provides an excellent curriculum of management and fundraising trainings. Each organization provides important, high quality, national services. Each of these organizations relies on training subscriptions in order to continue its services. These trainings provide important opportunities for LSAM members to network with non-LSC-funded and private bar colleagues. There is not a need for additional national training and support services at this time. We believe that an LSC-sponsored training and support program would be a more limited and less effective package of services; we also believe that LSC’s presence in this area would threaten the viability of the current national network.

Second, these are not appropriate roles for LSC. LSC is a funder and a monitor of regulatory compliance. LSC is not and should not become a services provider. All LSAM members work with organizations (local, state, and, on a national level, MIE) that are management services organizations (MSOs). These organizations provide us with technical assistance and strategic advice. These are critical services to our programs. However, it would be totally inappropriate for a funder to provide these services. Sometimes we seek advice about how to address a program weakness—we would be reluctant to bring these issues to a funder. Sometimes we seek advice because compliance with a specific regulation is very difficult for us—we would be

¹ We recognize that the training resources are uneven across the country. There are several states or regions where excellent support and training resources have been developed; in other areas these resources have not been developed. Our view is that high quality national training resources already exist and that state and regional trainings are most efficiently provided on a regional basis. It is far more cost effective to pay for travel and lodging for four trainers than for forty trainees. We would encourage LSC to facilitate efforts to create additional regional training entities. It should also be noted that if skills trainings are to be considered at the national level, the Shriver Center is already providing these.

very reluctant to bring these issues to LSC. If LSC were to assume this proposed MSO role it would create a conflict with the investigation and enforcement roles mandated by Congress.

Third, as discussed above, these functions would require a dramatically expanded LSC administrative structure.

5. **Fundraising.** At p. 12 of the draft Plan, LSC states its intent to “create an internal advancement office” in order to “pursue private sources of financial support”. In addition to raising its own funds and operating its own extra-governmental grant-funded programs, LSC would plan to provide advice and technical assistance to grantees on fundraising and development.

In Michigan—as state and federal funding sources have eroded and as all levels of government have experienced funding reductions—LSAM members’ ability to attract private national foundation grants has been the one bright spot on an otherwise bleak funding horizon. It is a real challenge to convince a national foundation funder to look favorably on regional, LSC-restricted providers. However, we have had some notable successes over the past five years in approaching these funders.

Based on our knowledge of and extensive contacts with a number of national funders, we do not believe that it is possible for LSC to create and promote an advancement division without competing for funding with its grantees.

As discussed above, the creation of a competent professional advancement division within LSC would be a significant expansion of management (and a significant commitment of resources) into a non-governmental service area.

Finally, we are not sure that LSC can expect success in fundraising. Many LSAM members have worked with government entities that have expanded their missions to attempt to raise private donation dollars—very few of these have been successful. Currently, large foundations are prioritizing grants that include collaboration-based programs documenting community connections and developed on the impact model. It’s not clear to us that LSC would be an attractive grantee based on these criteria.

6. **Conclusion.** We apologize that these comments focus on our criticisms of the Plan. LSAM supports the concept of a Strategic Plan and has no objection to many of the specific proposals in the Plan. However, we feel that the overall thrust of the Plan is a radical change in the purpose of the Corporation—we feel that LSC is walking away from its congressionally mandated role to fund and to regulate its grantees and is seeking to become a wholly different kind of organization. This new organization, with its vastly expanded administrative structure, will provide substantial management services to its grantees; will fundraise aggressively (almost certainly against its grantees); and will manage a variety of discretionary grant programs.

We disagree with the new direction proposed in the Plan. We urge the Corporation to revise the Plan in order to focus on the functions mandated by Congress and most needed by the programs in the field and the clients they serve. Those functions are to increase federal funding for legal services to the poor and to assure Congress that its grantees are operating in compliance with federal regulations and restrictions.

Thank you for the opportunity to comment. Please contact either of us if you have any questions or would like any additional information.

Richard Sloane

From: webmaster@lsc.gov on behalf of LSC - Legal Services Corporation: America's Partner for Equal Justice <webmaster@lsc.gov>
Sent: Wednesday, July 11, 2012 5:37 PM
To: LSC Strategic Plan
Subject: Form submission from: Comment Submission Form for LSC Board of Director's draft Strategic Plan for 2012-2016

Submitted on Wed, 07/11/2012 - 17:36

Submitted by anonymous user: [24.223.107.118] Submitted values are:

Your name: Doug German

Your e-mail address: dkgerman@hotmail.com Your phone number: 3085290556 Your comments:

At one time one of the stated goals of the federal legal aid program was to reduce poverty. I seldom see this goal stated or voiced. The emphasis has shifted to access. It is an elusive goal, hard to measure. However, I feel it should still be one of the goals of LSC and local programs. One way to measure would be to research a base-line and methods to measure progress. A simple method might be to gain certain information from each client to rate their level of poverty and then contact them some time later (a year or so, etc.) to measure their current situation. Access to the justice system does not mean very much if lives are not being improved. Taxpayers need to see a return on their investment and that their fellow citizens are getting to a place they no longer need free legal aid. No one wants to be locked into a revolving door of access that leads nowhere.

Thank you,

Doug German

Executive Director, Legal Aid of Nebraska from

2000 to 2008

The results of this submission may be viewed at:

<http://www.lsc.gov/node/2233/submission/2931>

Richard Sloane

From: GerrySings@aol.com
Sent: Wednesday, July 11, 2012 6:00 PM
To: Richard Sloane
Subject: Comment on Draft Strategic Plan
Attachments: Comment on Draft Strategic Plan.pdf

Attached is a comment.

Gerry Singsen
361 School Street
Watertown MA 02472
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July 11, 2012

Richard L. Sloane
Chief of Staff and Special Assistant to the President
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

Re: Comment on Draft Strategic Plan for 2012-2016

Dear Mr. Sloane:

Please accept this comment on the LSC Board's Draft Strategic Plan for 2012-2016.

I began my legal services career as a Reginald Heber Smith Fellow in 1968. In the course of that career I have performed many roles and had many opportunities to participate in discussions of LSC's strategic directions. Along the way I have had the honor of being a member of Lou Oberdorfer's Transition Team that took the OEO Legal Services Program and made it into the Legal Services Corporation in 1975, of being LSC's Vice President for Finance and Management under LSC President Dan Bradley from 1979 to 1982, and of serving as Special Assistant to LSC President Alex Forger from late 1993 to 1996.

During each of these periods at LSC, and in a number of other moments in these 44 years, LSC has faced important decisions about its strategic approach to its charge under the LSC Act. Conceptualizing the Corporation as the head of a national law firm and setting a course to place that firm, through its grantees, in every county in the country was a critical set of judgments in 1975. Deciding in 1981 that the era of the centralized law firm was over, and that only a decentralized model for Corporation leadership made sense when a sitting President sought to defund LSC was an equally critical but very different set of strategic conclusions. Then, in late 1993, a newly-confirmed Board of Directors embraced a Project Advisory Group vision of a \$3.6 billion delivery system designed to achieve "Equal Justice for People in Poverty." I'm proud to have had a part in each of those processes.

Today the Corporation, under the inspired leadership of President Jim Sandman, considers setting a path that may be as important as any of those referred to above. If it is not quite as ambitious or sweeping as "minimum access" or declaring a goal of a fully-funded "equal justice" system, that is appropriate to these times. But I think these times are more like the early Reagan era than the draft Strategic Plan is willing to accept. If I'm right, the Corporation might be wise to modify its plan in a way that embraces what it can still do well, recognizes what it cannot do, and has the wisdom to know the difference.

In 1980, LSC had an Office of Field Services with more than 100 employees at its D.C. headquarters and in nine regional offices (featuring management and legal Technical Assistance capabilities as well as comprehensive monitoring of more than 300 grantees), another 70 or so employees in the Office of Program Support (Training) (featuring Management and Paralegal divisions along with legal training and regional training specialists), a Research Institute with about 15 employees (exploring quality improvement, delivery systems and substantive questions), as well as a healthy management and administration infrastructure. The budget was \$21 million. The vision was of a national law firm led by LSC. Leona Vogt was just completing the Delivery System Study, Ken Smith was writing an early paper on measuring outcomes. Basic Lawyering Skills Training and Managing Attorney Training was offered without fee, the 1007(h) study was guiding development of better services to special populations with special legal needs, and the Quality Improvement Project was beginning to evaluate advanced systems for editing documents at a distance.

I see echoes of that vision of a vibrant, dominant LSC in the draft Strategic Plan. But each part of the vision is to be carried out by a dramatically smaller staff. The Corporation's budget, adjusted for inflation, is about the same \$21 million as in 1981, but the effects of inflation make those dollars worth only about 40% of their value in 1981. Moreover, the cumulative impact of GAO reports, die-hard legal services haters and their Congressional representatives on fiscal issues and monitoring, all under the tender scrutiny of the IG, require that today's LSC invest a larger share its diminished resources pure compliance and administration.

Even if the political situation were different, an LSC that strives to be the leader of a national law firm again with such a small staff will almost certainly fail. It will be able to do only a little training, a little research, and a little TA along with its major monitoring effort. In its drive to lead in all things it will diminish state-level leadership and foster unproductive competition. Even in 1980, with all its riches, LSC was struggling to fulfill its vision. Yet LSC provided 80% to 90% of the legal services funding in 1980; in 2012 it is providing about 25%.

And the political situation is miserable. Since 1980, every step taken by LSC has been scrutinized by a hostile minority in Congress. There is no "neutral" training -- every training event carries values about representation that will raise hackles on the hill. Every research effort will be a candidate for cries of social engineering and political motivation. What kind of advocacy is the explicit technical assistance effort going to embrace? Not the "high quality representation" of the early 1980's, or "policy advocacy" from the 1990s, or "legal counsel for the poor" from the 1960s. There are no safe havens here. If LSC tries to implement this plan it will be putting its head in a noose.

I do not wish to criticize the analysis in the Strategic Plan that sees each of the major strategies as important. I simply wish to suggest that more recognition of the realities of scarce resources and political limitations calls for a strategic vision that depends more on the efforts of others and accepts a critical but diminished role for LSC. We have been dealing with these forces for some time now. It feels like a classic case of the oft repeated statement of George Santayana, who, in his Reason in Common Sense, The Life of Reason. Vol.1, wrote "Those who cannot remember the past are condemned to repeat it."

What might LSC do best under these circumstances? President Sandman has been touting an "access" strategy. Perhaps LSC should seek to lead on helping the courts deal with the massive need of the eligible population of self-representing litigants. In such a strategy LSC might innovate freely (the SRLN certainly sees lots of needs for change, working in cooperation with the courts). A tight alliance with courts and AJ Commissions might be palatable at a tea party. And there would still be room for a "high quality" performance criterion and leadership from state funders on more aggressive advocacy needs.

I recently had the opportunity to develop some of these ideas about what might be LSC's best strategic posture in a more thoughtful way. I will close my comment with those thoughts, which appeared in a recent edition of the MIE Journal under the title "CAN DO, INDEED!"

I saw a delightful production of Bernstein's treatment of Voltaire's "Candide" last night. In this classic farce, the iconic optimist, Pangloss, puts a superficial positive spin on every negative occurrence in order to prove that this is the best of all possible worlds. Murder, rape, torture, deceit and other terrible events are all just misunderstood by the people to whom they happen. About to be hung, he notes that God in his wisdom made it possible to invent the rope.

Today in our legal services world, negative developments dominate our consciousness. The MIE Journal Committee sees an unending cycle of "one step forward, two steps back" and asks why, after 45 years of federal funding, "justice" isn't more important in our country? Why does the public allow our funding to decline just when low income people face increasing poverty and resulting legal problems? Is the "rule of law" collapsing? Should we abandon our historic reliance on government funding because any growth will inevitably be followed by cuts? It is all too frustrating. Only a Pangloss could find this the best of all possible worlds.

Yet underneath the stormy surface I believe there are at least three strong currents flowing toward more justice for low-income individuals with legal problems. Where these currents are taking us is probably not where we hoped we were going, but the emerging characteristics of this new world are far more positive than our bad feelings about today would suggest. I believe these currents are carrying us forward, not back. The public is not and will not allow our funding to decline in any sustained fashion. Instead, the public will increasingly support us through charitable giving along with governmental support. The rule of law is gaining, not declining, on the world stage.

The negative attacks and economic shocks are annoying and must be dealt with in the short run, but the three underlying developments will determine the shape of legal services in the future:

First, in these 45 years (since the Office of Economic Opportunity (OEO) began funding civil legal services in 1966), civil legal services has grown from a youthful and inexperienced movement into a mature institution in which leadership and underlying purpose are evolving naturally into new shapes that we can't predict.

Second, the systems through which people obtain just results and assert their legal rights are being reconceived along lines that are very promising but quite different than some of our earlier legal services visions.

Third, we may already be moving away from dependence on traditional funding by annually appropriated government grants toward a much more complex but healthy financial future.

A mature institution

The War on Poverty and its OEO brought forth a new system for providing legal assistance to low income individuals when its Office of Legal Services began funding legal services programs in 1966. Earl Johnson has told this story of hope and exuberance.¹ Young lawyers were recruited to join the crusade for social justice. Legal careers were shaped by the imagination of equal justice. Then, during the last half of the 1970s, the new Legal Services Corporation built on the OEO foundation and established a national delivery system. Legal aid reached into every county in America in 1980.

The legal services movement of 1980 was young and raw. LSC funding had grown from \$71 million to \$300 million in five years. Most legal services jobs in 1980 had not existed in 1975. LSC reported that 92% of its lawyers had less than ten years of legal experience.² The conventional wisdom of the day was that new lawyers would cut their teeth in legal services, getting invaluable experience working directly with clients, handling trials and appeals on their own, and then move on to jobs in law firms.³ The other 8% of program lawyers were spread out across the age spectrum. They included lawyers from legal aid societies that existed before OEO, and lawyers who had defied conventional wisdom and stayed past their predicted departure dates in order to pursue the OEO vision.

Most of the rhetoric of legal services dates from the OEO and early LSC years. Phrases like “empowerment,” “law reform,” “community development,” “social change” and “systemic advocacy” were everywhere. Serving as “general counsel to the low income community” was the model. These words inspired young lawyers of that era, and they accomplished much.

President Reagan brought this formative period to an end in 1981. Funding was cut 25% in 1982, which was actually more like a 33% cut because of high inflation. Rhetoric went underground, replaced by “high quality representation,” and LSC gave up the vision of leading a national law firm for social justice and closed the doors of its Research Institute and training division.

But the institution grew, year by year. By 1985, only 76% of field program attorneys had less than ten years of experience. More experienced lawyers of every age were three times as

¹ Earl Johnson, Jr., *Justice and Reform: The Formative Years of the American Legal Services Program* (1974).

² Or maybe it meant less than ten years of experience in their job in legal services. The data table isn't clear. Extrapolating from later tables suggests the meaning given in the text. LSC, *Selected Funding and Staffing Characteristics of Field Programs Supported by the Legal Services Corporation – Start of 1980: A Fact Book* (February 1980), p. 9.

³ In retrospect, this wisdom may have always been wrong. The Harvard “Career Paths Study” done by the late Leona Vogt demonstrated that lawyers tended to leave their first jobs after 3 to 5 years in about the same proportion in all legal careers. Leona had been the principle investigator for LSC’s Delivery System Study in the 1970s. Leona Vogt, *From Law School to Career* (Harvard Law School Program on the Legal Profession 1986).

common as in 1980. Five years later, less than 60% of legal services lawyers were less than ten years out of law school. 3% had 10 to 15 years of experience and almost 20% had more than that. Ten years after that, in 2000, less than half (48%) of legal aid lawyers had fewer than ten years of experience. The annual data tables have a new category by this time, attorneys with 20 or more years of experience; in 2000, fully 25% of legal aid attorneys met that description.⁴

The age stratification of legal aid lawyers is far advanced in 2010. In a standard year, about 5% of the national legal aid attorney population will be new, entry level hires. Attorneys with five or fewer years of experience are about 30% of the staff, slightly less than that will be arrayed between six and fifteen years, and about 40% will be lawyers with more than fifteen years at the bar.⁵

Or, to put it another way:

Legal aid attorney staffs are getting older: One third of the lawyers on these staffs are 45 or older.

About 15% of legal aid lawyers started their careers before President Reagan took office. The current leadership of many programs is drawn from this group of individuals.

However, 85% of legal aid lawyers have never worked in a time when their primary funding sources espoused a vision of “rebellious” lawyering⁶ or the law reform and community empowerment goals of OEO.

In fact, 30% of the lawyers on LSC-funded staffs were not born when Ronald Reagan took office, and

50% of the lawyers on LSC-funded staffs graduated from law school in the 21st century.

The data also document the obvious shift in gender. In 1982, only 38% of attorneys in LSC-funded programs were women; in 2010, women account for 69%. The effects of the shift from majority men to majority women may be as important as the aging of the attorney population and deserves further study.

On the other hand, there has been very little change in the race of legal aid attorneys. In 1982, 11% of attorneys were black, 10% Hispanic, 1% Native American and 1% Asian; in 2010 the comparable figures are 13%, 13%, 1% and 5%.⁷

⁴ LSC, Characteristics of Field Programs 1986, p. 11.8-9(unpublished draft); LSC, Fact Book 1990, p. 50; LSC, Fact Book 2000 (page not known).

⁵ LSC, Fact Book 2010, p.38.

⁶ Jerry Lopez, *Rebellious Lawyering* (1992).

⁷ LSC, Characteristics of Field Programs Supported by the Legal Services Corporation - Start of 1983 -- A Fact Book (Feb. 1983), pp.20-21; LSC, Fact Book 2010 (June 2011), p. 37.

As a result of this maturation process, the legal services system is probably much more stable than it was thirty years ago. Managers are no longer likely to be lawyers plucked from the ranks of advocates with no demonstrated managerial skills. Administrative and financial infrastructure is better thought out, more competently staffed and professionally trained. Supervision of legal work is much better, and young lawyers are more likely to receive supervision from more experienced senior staff.

Perhaps it is also true that the mature staff now found in legal services offices is less likely to make political mistakes than its immature predecessors. For better or worse, legal services lawyers are now fully integrated into the bar associations they mistrusted thirty-one years ago. In addition, former program staff are now judges in courts of almost every level of state and federal judiciaries.

A more controversial conclusion may also be warranted. The culture of an organization tends to persist for awhile as individuals depart and are replaced. Eventually, however, emerging leaders and different external conditions will combine to forge new visions and force new strategies that fit a new time.

The OEO vision still has weight. Lawyering is still a critical tool for empowering a low-income community and advocating for the rights of vulnerable people who would otherwise not be heard. Nevertheless, it seems likely that the OEO vision must give way to a post-Reagan reconceptualization.

We are on the threshold of a momentous change. In the next five or ten years, lawyers born in the forties and weaned as lawyers in the OEO era will be giving up their positions of leadership in our programs. The new leaders that replace them will come from a later generation and will inevitably bring with them a different sense of mission and a different set of goals. This transition has already begun. In Massachusetts, for example, only two of the thirteen people who were Executive Directors of field programs in 2005 are still Executive Directors. Ten men and three women, average age more than 60, all of them white, have been succeeded by a group of four men and six women, average age in their early 50s, two of them black and one Hispanic.

This is no longer an OEO legal services delivery system. It is a post-Reagan system. Its work will be grounded in a sophisticated, mature appraisal of justice and poverty in the 21st century. Its vision will be revolutionary but will fit its time. Perhaps because the OEO-era leadership is still holding on, the voice of the new vision is still muted. But I am confident that the new voice will be strong, creative and authentic. In fact, maybe the other two undercurrents discussed in this essay are that voice, beginning to seize the future.

Reconceiving the justice system

Contrary to popular opinion, the struggle for equal justice may never have been stronger in the United States than it is today. It's just that a major part of it is taking place in a totally different form than anticipated by the planning of our legal services community.

Our prevailing image of the need for reform in the justice system is lawyer-centered and adversarial. We have studied the incidence of legal needs among our eligible population and built an institution that deploys its legal professionals to offer legal advice and, for a small percentage of folks with serious problems, legal representation in judicial and administrative proceedings. Our planning for the future has projected this image into larger frames with more resources.

But fundamental change has been taking place in our legal system while we have been busy making our plans.⁸ There have always been large majorities of low-income folks going through legal processes without a lawyer. They used to be voiceless, usually defaulting or showing up to be dismissed by judges and clerks. In the 60s and 70s, legal services lawyers began to give them voice with cases like Goldberg v Kelly. Our vision was one in which a legal services lawyer or paralegal took each case, analyzed the facts, applied the law and guided the client to a just result. We articulated this vision in policy documents and funding proposals.⁹

Of course, we paid attention to the plight of those who could not make it through our waiting lists and queues to representation. The person proceeding “in pro per” or “pro se” got a share of our resources through clinics, written materials, telephone advice, hotlines and, more recently, LegalHelp websites. Along the way, the unrepresented party became a “self-representing litigant” (“SRL”).

While we were nibbling at the edges of the vast array of SRLs, the courts were being swamped by the mass of increasingly-informed parties. Gradually, the judicial branches around the country began to figure out some strategies that helped. Self-help centers, information desks and law librarians began to channel SRL energy in more useful ways. Educational programs and ethics opinions supported judges and clerks who began helping SRLs navigate the judicial maze and speak effectively in court. Mediation and conciliation programs brought professionals into dispute resolution roles. Lawyer for the Day programs developed non-representation approaches that guided SRLs through their day in court. On line, more and more standardized forms became available along with increasingly flexible and competent tools for finding and using those forms.

At the same time, the ranks of helping professionals offering legal help to low-income individuals with legal problems also grew. Usually without any sense of the broader context in which individual developments occurred, non-lawyers began to dispense legal information and even take advocacy roles. Perhaps the largest number of these new members of the justice community are found in social service agencies, helping their clients obtain benefits and improve their lives through administrative agencies. Most recently, LSC has been emphasizing the role of public librarians who have computers with which to find LegalHelp websites and training in research methods that are easily applied to finding the law. Inevitably, some of these social service workers accompanied their clients to courts and administrative agencies and sometimes were thrust into speaking roles.

⁸ John Lennon, Beautiful Boy (“Life is what happens to you while you’re busy making other plans.”)

⁹ See, e.g., PAG, Equal Justice for People in Poverty (1993); NLADA and CLASP, Toward a Comprehensive, Integrated, Client-centered, Statewide Delivery System (2000); American Bar Association, Standards for Providers of Civil Legal Services (1986) and ABA, Standards for the Provision of Civil Legal Aid (2006).

I believe these trends are going to grow and gradually transform operative visions of equal justice. There were never going to be enough lawyers to staff a full representation model of a delivery system. Instead, non-lawyers are going to continue coming into information and advocacy roles, meeting the judicial and administrative agency strategies for managing the flood of SRLs. The promise of these new approaches is access to just outcomes without a lawyer.

A hint of a next step along these lines can be seen in Turner v. Rodgers,¹⁰ decided by the U.S. Supreme Court last June. The case asked whether an obligor could be sent to jail without having been provided with a lawyer at a civil contempt hearing for failing to pay child support. The Court ruled that he could. But the reasoning was not simply the traditional explanation that the obligor had the keys to his jail cell – pay and get out. Rather, the Court suggested that the due process clause, under which counsel was required in criminal proceedings, did not always require a lawyer. Other approaches that offered fundamental fairness could suffice. The door to more non-lawyer systems of helping SRLs work out their cases swung open a bit wider.

There will be plenty of legal services work to do as this future emerges (if it does).¹¹ Lots of courts have yet to embrace the best practices that are being developed, and making sure that fundamental fairness is actually the result of new systems will require vigilance. Allied professionals will need good legal materials to work with and training in relevant law. Some SRLs will have complex disputes that call for a lawyer's skills to unravel and policy advocacy will still be essential. Nevertheless, the road to justice for many low-income individuals is improving.

New funding mechanisms

Money and politics are at the root of the present depression among legal services supporters. The great early hopes for the Legal Services Corporation seem irretrievably compromised. The recent Tea Party theatrics only confirm what has been apparent for 30 years. LSC and its grantees are in a fishbowl. Any sign of leadership from LSC that can be seen as supporting OEO-era visions will be interpreted as taking a side in the culture wars. Indeed, because legal disputes so often involve values clarifications by courts, LSC funding will remain a useful target for social issue ideologues even if LSC itself maintains a low profile.

While LSC's range is limited, the three currents discussed in this paper may all be ones that LSC can safely support. The mature institution needs an effective grant maker and performance monitor, and training for effective management and administration would be helpful. The foray into mentoring and leadership development was more risky; values-based decision making opens up more sensitive subjects. Similarly, the development of court-based methods of producing just

¹⁰ June 20, 2011.

¹¹ As this article was being prepared for print by the MIE Journal, Margaret Marshall, the former Chief Justice of the Massachusetts Supreme Judicial Court, suggested that this subtle shift in vision was under way. In an Op Ed piece calling for financial contributions to support legal aid, Chief Justice Marshall inverted our traditional understanding of the role of legal services programs. "Nonprofit legal aid organizations are the most effective supplement to our court-sponsored programs for civil litigants in need." Boston Globe, October 29, 2011, p. A11 (emphasis added).

outcomes for SRLs is a pretty safe area for LSC leadership. The Technology Innovation Grant project seems well designed along those lines.

State-level funding – appropriations, IOLTA and filing fees – has been the prime area for growth during the last 25 years. State funders not only support the network of LSC grantees but, in many cases, give grants to other providers of civil legal services as well, so the network of state funders encompasses more of the national delivery system than LSC.¹² Despite the lowest interest rates of the modern era, historic levels of state debt and a long and deep recession, we appear to have maintained total national funding for civil legal services at pre-recession levels for the first two years of the recession. 2011 may well see a dip, but each year so far has brought surprises.

But reliance on discretionary appropriations from federal and state governments is inherently vulnerable to political upset. One approach that reduces that vulnerability is the campaign to establish rights to counsel in more civil cases. There is much to consider regarding this campaign,¹³ but my point for this article is that the legal services community is already well on the way to new approaches to resource development that will cushion the effect of continuing political challenges regarding LSC. Europe is even further along on this road, providing an example to follow.

We might start with the massive funding for civil legal services that is already being spent in the states but simply not counted in these discussions. Many states have a right to counsel for parents facing termination of parental rights, for wards in guardianship petitions, for psychiatrically challenged individuals who lack competence to consent to the administration of drugs, and even in divorce and custody cases. All of these types of representation have been priority work for legal services programs in the past.

It appears that they are left out of our calculations of funding to the degree that the funding goes to public defenders. That may have made sense previously, but not when a concerted effort to establish more rights is under way. If a state adopts Article V of the Uniform Probate Code, and creates a right to counsel for wards in guardianship proceedings, the new funding should be included in our calculations of civil legal services funding whether a civil legal aid program or a defender legal aid program is receiving the money.

This is not a small matter. The Massachusetts public defender is the Committee for Public Counsel Services (CPCS). CPCS handles a variety of civil matters for which there is a right to counsel. Several years ago, when IOLTA funding was more robust,¹⁴ the CPCS civil budget was

¹² There are some large providers that eschew LSC dollars because of the restrictions (e.g., CLS in Philadelphia, Legal Aid Society in NYC and GBLS in Boston), do not qualify for LSC grant lines (e.g., state support and national support centers whose LSC funding was eliminated by Congress in 1996) and there are many smaller advocacy organizations that cannot compete for LSC dollars but play important roles in state delivery systems.

¹³ See L.Powers, J.Bamberger, G.Singsen & D.Miller, Key Questions and Considerations Involved in State Deliberations Concerning an Expanded Civil Right to Counsel, M.I.E. Journal Summer, 2010, p.10.

¹⁴ Massachusetts' IOLTA Committee earned \$32 million in 2008. In 2010 its receipts fell to \$9.2 million, which was the second highest state total that year.

larger than the total funding of the rest of the civil legal services community. This appears to be true in other states as well.¹⁵

The key to the future stability of legal services is that the funding is perceived as a right. Compared to LSC, or to a discretionary state appropriation, a right to counsel is more likely to be funded. There can still be battles over the amount of the appropriation. Public defender budgets have been cut by governors and legislatures. But we rarely encounter a situation in which the budget might be eliminated entirely.

Along with a right to counsel strategy, another path that reduces dependence on government grants is to be more entrepreneurial. For example, collecting attorneys' fees holds the potential to generate new revenue. Even greater revenue is available through carefully chosen fee for service work. LSC has restrictions on fee-generating cases that need to be observed, but it is feasible to work together with local bar referral systems to provide legal assistance to financially ineligible clients. Any private lawyer who wants to participate can do so. No clients should be taken whose income exceeds some level agreed to with the bar (such as 250% of the poverty line).

In the long run, there are two other developing approaches to fund raising that promise greater independence from the government grant cycle. The first is the burgeoning Medical-Legal Partnership movement. In the long run it appears possible that the most efficacious remedy for certain medical conditions is a lawyer. The paradigmatic case is childhood asthma, which in some instances can be all but cured by forcing the landlord to get rats and roaches out of the building. If further research reveals other such circumstances, or similar conditions in which a lawyer is one part of a well-designed treatment team,¹⁶ the day may not be far off when the New Yorker cartoon shows a doctor handing a prescription slip to someone and saying, "Take two lawyers and call me in the morning."¹⁷ The national cost of health care in the United States was \$2.5 trillion in 2009.¹⁸ One-tenth of one percent of that cost would be \$2.5 billion.

The second road to financial independence is general charitable giving. Some legal services programs have become quite successful at raising funds from lawyers, and it is appropriate for lawyers to support legal assistance for the poor. But legal services is a service to the whole community, not just the poor or the lawyers. Like hospitals, museums, the symphony or the boys club, a legal aid society doing its job is a vital element of a healthy community. Without it, a

¹⁵ Although not germane to this essay, it is worth noting that we also omit Protection and Advocacy funds and Ombudsmen funds unless they are received by a traditional legal aid society. Excluding them from our conception of the legal services community is the first step to excluding them from our awareness as allies.

¹⁶ For example, the new health care law creates incentives for hospitals to reduce the frequency with which surgical patients return to the hospital after being discharged. It's easy to imagine a lawyer as part of a discharge planning team and a post-discharge support team.

¹⁷ See Singen, Take Two Lawyers (speech to Medical-Legal Partnership Summit Conference, March 26, 2010.

<http://www.medical-legalpartnership.org/sites/default/files/page/Gerry%20Singsen's%20Remarks%20--%20Take%20Two%20Lawyers.pdf>

¹⁸ Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, National Health Expenditure Accounts 2009

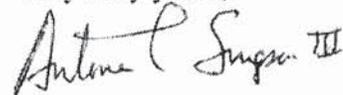
town is a less desirable place to live, work or raise children. It's time for legal services to take its proper place as one of our cherished institutions.

I began this essay with MIE's question, why the public doesn't love justice more? I'm ending with the suggestion that it does love justice more than we know, but we haven't been asking the question right.

One personal note about these developments is important. I don't like them all. I am a product of my times, and long ago hitched my wagon to the engine of high quality representation. The catch phrases and explanations of this vision have filled my years. They come down to believing that legal services should aspire to develop a full understanding of a client's legal situation, assess a full array of legal tools with which to pursue remedies under the law, implement strategies with a high degree of skill in the use of those tools and give an informed client the choice about which remedies to pursue. This is, of course, the vision of legal services that wealthy individuals and thriving commercial institutions have.

Current developments seem to be leading us to a less expensive, less adversarial system of meting out justice for the 70% or more of us who cannot afford the price of high quality representation. The emerging system falls short of equal justice under law, just as most human inventions fall short of their aspirations. I hope for more in the hands of the new leaders. But I believe we are headed toward more justice for more low-income people and that our generation has done its part in creating that best of all possible worlds.

Very truly yours,

A handwritten signature in cursive script that reads "Antone G. Singen III". The signature is written in black ink and is positioned above the printed name.

Antone G. Singen III

Richard Sloane

From: webmaster@lsc.gov on behalf of LSC - Legal Services Corporation: America's Partner for Equal Justice <webmaster@lsc.gov>
Sent: Wednesday, July 11, 2012 6:17 PM
To: LSC Strategic Plan
Subject: Form submission from: Comment Submission Form for LSC Board of Director's draft Strategic Plan for 2012-2016

Submitted on Wed, 07/11/2012 - 18:16

Submitted by anonymous user: [184.175.145.100] Submitted values are:

Your name: Alan Ells

Your e-mail address: asells@aol.com

Your phone number: 989/798-6631

Your comments:

I read with interest the LSC's Strategic Plan and applaud its focus on the goals of improving quality in delivery while serving as a major voice in the struggle for equal justice in the US.

As a attorney an former Executive Director with nearly four decades of legal services experience I encourage you to consider the implementation of an outcome based evaluation of the effectiveness of the legal services being provided across the country. The United Way has a long history of successfully using grantee developed outcomes to measure short term, medium range and long range outcomes for services they funded. The key here is to deeply involve each grantee in developing these measures but to have the grantor have significant input as well. This partnership insures that the priorities of both grantee and grantor can be addressed and focuses limited resources on the most effective activities. We were able to successfully utilize outcome measures in programs I managed in Detroit and Green Bay and, to a lesser extent in Holyoke, Massachusetts. They focused on outcomes in housing, domestic relations and homelessness but can be adapted to virtually any service. They also allow for cost comparisons between different systems of service delivery in different areas of law.

The use of outcome evaluation would support both the First and the Third Goal of your Strategic Plan. I would be glad to discuss outcomes further there is interest.

The results of this submission may be viewed at:
<http://www.lsc.gov/node/2233/submission/2932>

Richard Sloane

From: Don Saunders <D.Saunders@nlada.org>
Sent: Wednesday, July 11, 2012 7:43 PM
To: Richard Sloane
Subject: NLADA Comments on draft LSC Strategic Plan
Attachments: Comments on Draft Strategic Plan.2. 7 12 (2).docx

Hi Richard. I hope you are doing well in this sweltering environment.

Please find attached the comments of NLADA on the LSC draft Strategic Plan. We look forward to discussing these comments more broadly in the future.

Don Saunders
Vice President for Civil Legal Services
National Legal Aid and Defender Association
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MEMORANDUM

To: Richard Sloane, Chief of Staff and Special Assistant to the President, LSC

From: Dennis Groenenboom, Chair, NLADA Civil Policy Group

Don Saunders, NLADA Vice President, Civil Legal Services

Re: Comments on Draft LSC Strategic Plan 2012 – 2016

Date: July 11, 2012

The National Legal Aid and Defender Association (NLADA) appreciates the call for comments issued by LSC regarding its draft Strategic Plan covering the years 2012 – 2016. This response reflects the views of a wide range of NLADA volunteer leaders both from within and outside the LSC provider community.

We agree with the draft's premise that your planning process occurs at a critical, even extraordinary, time in this nation's effort to ensure that our legal system provides equal justice for people living in poverty in the United States. The long and deep recession that has torn at the fabric of our nation has led to 64 million people living at or near the poverty line being eligible for legal services from your grantees. As you note, the economic times have also created extraordinarily tight budgets for LSC organizations.

The draft represents a serious and significant effort by LSC to prioritize its activities over the next five years. Such an effort is vital to communicate a vision and aggressive strategic approach that marshals LSC's scarce resources in the most effective manner. You should send a clear signal as the largest funder of civil legal aid in this country to recipients and the broader stakeholder community about what is important to you.

While we agree with and support many of the objectives contained in the current draft, we will only comment on areas of concern.

There are several issues we submit for your consideration as you go forward:

- **Goal 1. Maximize the Availability, Quality, and Effectiveness of Legal Services**

1) LSC Funding. In our view, as pointed out in NLADA's letter to LSC regarding the funding mark for FY 2014, your advocacy in the Congress for more LSC funding is the most important function of the Corporation. It is essential that you lay out a vision, rationale and clear statement of need to maximize the federal component of funding necessary to meet our society's promise of equal justice for all Americans. While that responsibility is suggested in several parts of the draft, we believe that

this function and commitment of LSC should be stressed explicitly, as it was in LSC's last Strategic Plan (Goal 1, Objective 4).

The fact that LSC's grantees are unable to serve millions of disadvantaged individuals and families seeking their assistance underscores the need for LSC to focus its energies on educating the Congress about this terrible gap in our justice system. We support your stated goals of developing more compelling data to underscore the need for and effectiveness of civil legal assistance. Convincing policy makers on both sides of the aisle about the value of investing in the LSC-funded system should be a paramount function over the next five years. As we have pointed out many times in the past, federal funding for LSC remains the essential building block upon which the entire civil justice system for poor people is built.

2) Best Practices. We support your focus on using the resources of LSC to identify and promote best practices beneficial to the maximization of effectiveness in the legal aid community. We particularly support the inherent recognition in the draft of the wide range of best practices relevant to improving the quality of civil legal assistance. We view an effective delivery system to include a **wide continuum of services** - from strategic impact advocacy, to unbundled legal services, to effective use of technologies and data sources to greatly expand the reach of the system to serve those who can effectively represent themselves when provided with the information they need. While your grantees may differ greatly as to the resource choices they make along this continuum of service, LSC should ensure that its expansion and sharing of best practices covers the wide array of management and advocacy practices relevant to your grantees.

We would also suggest that your commentary on best practices be much more specific as it relates to issues of **diversity and cultural competence**.

The LSC website contains a "Diversity Statement" that LSC embraces diversity as a core value. The absence of even the word diversity in the 2012 Strategic Plan is a significant concern. The Strategic Plan is a document that signals to the country and the world how issues of difference will be engaged by LSC management and board. We encourage that you incorporate a clear and early statement in the 2012 Strategic Plan that mirrors the Diversity Statement from LSC's website which states:

LSC embraces diversity as a core value. We recognize that our success as a corporation depends upon creating and maintaining a diverse team of talented professionals, and we are committed to a workplace that reflects and supports diverse individual backgrounds and perspectives. Our commitment to diversity, inclusion, and non-discrimination includes race, sex, age, religion, national origin, sexual orientation, gender identity/expression, personal appearance, genetic information, political affiliation, marital status, family responsibilities, disability and status as a veteran, and any other characteristic protected by federal, state, or local laws or regulation. We strive to have a workplace that is comfortable and welcoming for everyone.

The ABA Standards have two standards (2.4 and 2.5) that relate specifically to diversity and cultural competence in addition to an inclusion of the concepts throughout the document from the

introduction to the last standard. We would encourage a similar overview of the entire Strategic Plan to incorporate language that evidences LSC's strong commitment to diversity, inclusion and non-discrimination as core values.

3) Performance Management. This initiative holds a number of concerns that we would urge you to seriously consider. We clearly understand the need for LSC and the entire legal aid community to develop evidence-based data to improve the quality and effectiveness of the legal services grantees provide and to generate demonstrable results for funders and other stakeholders. However, as currently drafted, the Strategic Plan is ambiguous at best regarding a number of points we believe to be vital to the current system of delivery.

First, the draft is silent about the role, if any, of the existing LSC Performance Criteria as a quality tool going forward from the adoption of the new Strategic Plan. The criteria were developed with painstaking care through a process that involved a number of recipients and others knowledgeable about quality in the delivery of legal services. They are also indexed to the ABA Standards for the Provision of Civil Legal Aid. These criteria have been in use since 2007 and have served as the basis of LSC oversight and quality improvement initiatives for a considerable amount of time. Our general feedback around the usefulness and relevance of the criteria has been uniformly positive. The criteria clearly define the various areas of legal representation essential for quality legal assistance and have useful indicators to help measure a program's success toward the respective performance goals. We recognized that much has changed, and the need for updating is obvious. However, we suggest that you develop that revision using the framework already in place with the existing Performance Criteria.

Second, our most serious concerns center around the draft language related to quantitative metrics. The performance standards and metrics as they relate to measuring **outcomes** clearly suggest to us that LSC is moving toward a system of national outcome measures, identical in their application to each of your 134 grantees.

In the past, LSC has considered the imposition of a national system of outcome measurements on its grantees. We urge you to reject that approach as you give final consideration to your Strategic Plan.

A national outcome measurement system that focuses on generic results obtained for clients would serve to stifle creative local program efforts to develop ways to use outcome measures to improve program management and to increase program quality and effectiveness. These efforts should be tied to existing demographics and priority areas of service as they greatly differ among your various geographical components. You should avoid such a dramatic shift to centralizing delivery at the national level. LSC can develop systems to capture more effective evidence-based data and measure program performance differently while still honoring the concepts inherent in providing local flexibility in deciding how to spend scarce federal resources in conjunction with other funding sources in a coherent whole.

A national set of outcome criteria should not be used as an indicator of the quality of a particular program's services. LSC rejected this approach in the past after giving the issue careful consideration and considerable analysis and concluding that collecting national case outcome data is beset with significant difficulties and not essential to helping LSC determine whether a civil legal aid program grantee is effective. In addition, there are a variety of burdensome administrative

recordkeeping and cost issues involved in collecting such data that raise significant cost-benefit and accuracy concerns. Furthermore, there may well be severe unintended consequences from collecting that data when seeking funding, particularly at the federal level, including adverse reactions in Congress and imposition by Congress of its own narrow access-focused outcome system.

Therefore, NLADA does not believe that LSC should proceed to include within the Strategic Plan an effort to develop a national outcome measurement system. That is not to say that NLADA does not support LSC in its effort to gather, maintain and use data on the outcomes achieved by its grantees in their local communities. Instead, to move toward the goals of this Initiative, LSC should encourage its programs to establish their own outcome measurement systems that are keyed to the outcomes the programs themselves have determined are relevant to their own priorities and management objectives. In conjunction with grantees and their representatives, LSC should develop templates and tools to assist grantees to set goals and measure outcomes.

To date, a number of states and LSC grantees have adopted their own outcome measures as a means of addressing local priorities and differing client goals and needs. A one-size-fits all set of national outcome measures is antithetical to the highly decentralized civil legal aid delivery systems.

Moreover, any national system of outcome measurement administered by LSC may result in the imposition of very detailed and time-consuming record keeping and documentation requirements that LSC will feel compelled to impose in order to ensure that the data is “accurate” and fully documented.

Third, we also have concerns with the **efficiency metric**, as it too could be used to centralize legal aid delivery into a one-size-fits-all system that would unduly stress the importance of case numbers over other, reasonable measures of quality. Your 134 grantees operate in very different environments. On a simple measure, a dollar in New York City does not buy as much as a dollar in Albuquerque. To judge program performance on cost-effectiveness alone will not even provide a true measure of quality when used to measure a provider’s cost per case. We also caution you to consider other unintended potential consequences of such an approach, such as the depression of the already abysmally low legal aid salary structure, in an effort to hire more personnel to close more and more cases.

Even more significantly, as the saying goes: “We should avoid valuing what we measure rather than measuring what we value”. As previously noted, your grantees have carefully crafted delivery models that allocate resources to a broad continuum of legal assistance, including representational activities aimed at achieving “lasting results” under Standard 2.6 of the ABA Standards for the Provision of Civil Legal Aid and current LSC Performance Area Three (1)(c). The results of some of the work necessary to address recurring, systemic issues affecting large numbers of eligible clients are difficult to measure under a cost effectiveness approach. Some of these cases are time consuming and expensive. We urge you to avoid a national measure that significantly dulls the incentive to pursue lasting community outcomes by primarily measuring cost efficiencies.

Again, we support the development and use of outcome measures aimed at improving program performance and outcomes. Yet we suggest that you work with grantees, funders and other

stakeholders to address the complexities related to measuring the impact of the legal assistance activities of your grantees. We do not believe that a system of national outcome metrics based upon a primary factor of cost effectiveness based upon the amount of legal services delivered is the appropriate way to proceed as you pursue your Plan over the next five years.

Fourth, with respect to the area of **performance triggers**, we reiterate our strong support for the maximization of the per capita based allocation of LSC basic field funding, particularly in light of the huge financial pressures facing all of your grantees. We ask that any system LSC develops to provide rewards or corrective actions be respectful of this principle.

4) Operational Support. As to training and support, NLADA stands ready to assist and partner in this arena in any way that we can. We appreciate your recognition that many other organizations, both inside the legal aid community (NLADA, MIE, the Shriver Center, etc.), and outside organizations are also involved in this important initiative with your grantees. Some of your focus areas are already being addressed by some of these organizations, though possibly toward a different end than that which you aspire to. We suggest that one area you identify - training for grantee boards - be expanded to cover a wider array of board governance training than simply LSC-specific training issues.

- **Goal 2. Become a Leading Voice for Access to Justice and Quality Legal Assistance in the United States**

Once again, we share this priority with LSC and enthusiastically support your focus on the general concept, both with the public at large and with potential sources of funding for your grantees. Creating and conveying a compelling narrative about the needs of LSC's clients and the work of your programs is essential to your mission, particularly in such trying economic times.

We only have a few comments on this goal:

- 1) Recognition should be given to poor people and community voices in the development, cultivation and delivery of the message.
- 2) We appreciate the sensitivity that the Plan expresses with regard to LSC's efforts to raise private funding for its own internal use to avoid competition with sources that might otherwise provide funding for grantee operations.

- **Goal 3. Ensure Superior Fiscal Management**

We support the concept of LSC doing all it can to ensure its own fiscal integrity and that of its grantees. You should approach this goal with the clear understanding that your grantees are staffed by thrifty, hardworking and underpaid advocates. They are under-resourced programs and providing them with support to ensure superior fiscal management with limited resources of staff, money and technology is certainly an important goal of the plan.

However, since this concept is one of only three strategic goals in the Plan, we urge you to take a broad view of the wide range of responsibilities that LSC has to the provision of quality legal aid in addition to ensuring a high level of fiscal management. As you consolidate your management structure and hire a Vice President of the Office of Grants Management experienced in grants management and internal controls, LSC should also ensure that adequate resources are devoted to supporting the programmatic side of your grantee's work.

As you restructure and pursue the strategic goal of fiscal management, you should ensure that your management and structure reflect both the current financial limitations on LSC's internal capacities and the need to ensure that a variety of tasks, including adequate support for the programmatic side of LSC's management, are addressed.

Thank you for your consideration of these comments. Please let us know if we can provide further information. We look forward to discussing these issues in more detail with you in the future and doing what we can to help LSC achieve its vision of an adequately resourced, quality system of civil legal aid.

Richard Sloane

From: Rasmussen, Raun <rrasmussen@ls-nyc.org>
Sent: Wednesday, July 11, 2012 11:13 PM
To: Richard Sloane
Subject: comments on LSC's Strategic Plan
Attachments: LSNYC Comments on LSC's Strategic Plan 2012.doc

Mr. Sloane:

Please accept our comments on LSC's Strategic Plan. Have a good summer.

Raun

Raun J. Rasmussen
Executive Director
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rrasmussen@ls-nyc.org



July 11, 2012

Legal Services New York City strongly supports LSC's Strategic Plan. We submit the following comments for your consideration.

Legal Services NYC Fights Poverty And Seeks Justice For Low-Income New Yorkers

Legal Services-NYC's mission is to fight poverty and seek justice for low-income New Yorkers. As the largest civil Legal Services program in the nation, we are devoted to sophisticated, aggressive advocacy that addresses the most pressing problems of low-income New York City residents. We serve nearly 46,000 clients and family members annually. LS-NYC provides services throughout New York City, with nearly 250 advocates and more than 40 offices and intake sites throughout all five boroughs.

Our work includes:

- **Protecting Housing**

LS-NYC stops foreclosures with the largest foreclosure-prevention team in the country. Our housing practice prevents and stops evictions, and obtains repair of unsafe dwellings, for thousands of low-income tenants and their families each year.

- **Strengthening Families**

LS-NYC's family law advocates secure safe environments and financial stability for victims of domestic violence and their children. LS-NYC attorneys and social workers stabilize at-risk families by providing legal services and obtaining support services, including helping immigrant domestic violence and crime victims and their families to adjust immigration status to put them on the path to citizenship. Our new certified mediation program helps low-income people resolve issues involving divorce, custody and visitation arrangements, child and spousal support, and equitable distribution.

- **Gaining Access to Education and Health Care**

Advocates in LS-NYC's education practice secure access to education and protect students' rights by stopping inappropriate school discipline and ensuring that students with disabilities have access to meaningful education. LS-NYC also: represents low-income, uninsured New York City residents who need public health insurance benefits; partners with health care providers so that patients have

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Raun J. Rasmussen, Executive Director

Joseph Steven Genova, Board Chair



representation in housing, financial security, and access to health coverage cases; and provides legal services that support the development of health care services in underserved neighborhoods.

- **Securing and Safeguarding Subsistence Income**

LS-NYC’s Disability Benefits, Public Assistance, Unemployment and Employment, Consumer, Tax and Bankruptcy advocates ensure that thousands of low-income families each year have and retain essential sources of subsistence income.

We operate targeted projects designed to meet the needs of especially vulnerable populations. For example, LS-NYC recently launched the Veterans Justice Project to serve New York City’s low-income veterans. Approximately nine months into our start-up year, the Project has already served 498 veterans from across New York City, through innovative partnerships with the VA and more than 30 veterans-serving organizations.

Too Many of New York City’s Poor People Do Not Have Access To The Justice System

The economic situation for low-income New Yorker City residents is increasingly grim. A significant and increasing number of our residents are low-income. Census data released late last year show that the number of New York City residents living in poverty grew to 20% -- and a full 40% live below 200% of the federal poverty line.

Under the leadership of the State’s Chief Judge Jonathan Lippman, the Task Force to Expand Civil Legal Services in New York has documented New York’s “crisis of the unrepresented.” The Task Force reports that while the need for civil legal assistance for low-income New Yorkers is dire, a severe lack of resources means that *at best* only 20% of that need is met. 99% of tenants are unrepresented in eviction cases in New York City; 99% of consumers are unrepresented in debt cases; 97% of parents are unrepresented in child support cases; and 44% of homeowners in foreclosure are unrepresented. At Task Force hearings, testimony from judges confirmed that many of these unrepresented people lose valid claims because they lack representation.

One of the Task Force’s key findings is that the unmet need for civil legal assistance is “profoundly impacting vulnerable New Yorkers and costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence and increasing poverty.”

Legal Services NYC Supports LSC’s Strategic Plan

- **LS-NYC strongly supports LSC’s efforts to become a leading voice for civil legal services for poor Americans.**

In New York City, our LSC funding is being slashed from \$17.5 million in 2010 to less than \$10 million in 2014. We have cut staff and are closing offices. The single biggest strategic need is to increase funding so that we can provide effective high-quality advocacy to more low-income people who need help. The doors of the justice system must be open to all low-income Americans – not just to a tiny fraction of those who need legal representation and advocacy.

We especially appreciate LSC’s commitment to helping our programs identify and access other sources of federal funding. Although we currently receive funding from the Department of Housing and Urban Development, the Department of Justice, and the Internal Revenue Service, we know there are other

federal agencies that would be willing to fund the important work that we do to address civil legal problems. We hope LSC can help us find those funding sources.

We also agree that identifying the “business case” for legal services is critical. This is a new approach that our Chief Judge has embraced, and it is important to continue to expand the variety and power of arguments to support the funding for our services, particularly as the competition for a shrinking pool of federal dollars intensifies.

LSC commands a unique position in the nation, and we look forward to LSC’s leadership in bringing the importance of civil legal assistance to national prominence. Collectively, we must do a better job of telling our clients’ heart-wrenching stories and explaining the importance of our advocacy. LS-NYC is ready to partner with LSC and our sister legal services organizations to accomplish this important goal and strongly supports its inclusion in LSC’s Strategic Plan.

- **LS-NYC also strongly supports the Strategic Plan’s focus on improving the availability, quality and effectiveness of legal services.**

LS-NYC stands for the principle that that poor Americans deserve professional, high-quality and effective legal services that are delivered by compassionate, skilled and dedicated lawyers. While in times of extremely scarce resources it is tempting to erode services so that more people at least get “something” and fewer are turned away, this approach can be a dangerous trap. The problems that poor Americans bring to legal services offices are often desperate and complex, and require skilled lawyering to resolve. We applaud LSC’s initiative to cultivate “best practices” that will enable programs and advocates to tackle and resolve pressing legal problems. We are confident that we already employ many “best practices” that could be a guide for others, and look forward to continuing to learn from our colleagues.

We also caution that the metrics, standards and measures employed by LSC must support the efficient delivery of only the right kind of legal services: those that are effective in resolving the most critical legal problems. We understand that the “unbundled” approach to providing services may allow a more flexible service delivery model, but we remain concerned that problems may not get solved by the simple provision of information or assistance that allows clients to proceed pro se: if legal problems do not get solved, we think there should be a serious inquiry about the efficacy of the services provided. Metrics should support the delivery of services with proven results.

We applaud LSC for undertaking this planning process and for identifying these critical goals to advance all our work. We would be very happy to participate in the implementation process in any way that would be helpful.

Thank you for the opportunity to submit these comments.

Raun J. Rasmussen
Executive Director

Andrea Zigman
Deputy Director

Richard Sloane

From: Jim Sandman
Sent: Thursday, July 12, 2012 4:49 AM
To: Richard Sloane
Subject: Fw: LSC Draft Strategic Plan

James J. Sandman
President
Legal Services Corporation
3333 K Street, NW
Washington, DC 20015
202-295-1515

----- Original Message -----

From: Linda Rexer [mailto:Linda@msbf.org]
Sent: Thursday, July 12, 2012 12:47 AM
To: Jim Sandman
Subject: LSC Draft Strategic Plan

Dear Jim:

This is to provide some input on LSC's draft Strategic Plan, 2012-2016. Forgive the brief email format – I am in the middle of a vacation but wanted to get a few thoughts to you about the plan.

This feedback is from me personally, but I want you to know that it is consistent with what I have heard from Executive Directors of several other large programs managing IOLTA and/or other state funding.

Having a plan in and of itself helps the organization focus activities toward identified goals and clarifies the organization's role. Also, I think other funders and the grantees all appreciate that the process allows for considering input before finalizing it. So, though there are many positive ideas in the plan, I will get right to my concerns (due to my limited time).

In a nutshell, to me the plan appears unrealistically ambitious, particularly because it is not likely that there could be enough funds to fully develop and support the new strategies planned. For example, if the quantitative output requirements are not implemented with adequate support, it is possible the resulting system could not only increase LSC's administrative costs but could be counterproductive to its goals of improving quality. Also, inappropriate use of metrics by a different future LSC administration could be destructive to the overall delivery system.

Regarding the quantitative metrics, I think this plan goes further than the outcomes group discussed or the PWF grants seemed headed for. Some output measures could be positive but not to "rank" programs in the fashion proposed, rather to help programs use data better in improving and communicating about their work. As our outcomes group noted (but this plan does not appear to envision in this plan), the field needs to be involved in testing new outcome measures, perhaps with pilots and models that may help individual programs better use such data. Also, the new plan does not seem to emphasize the continued use of LSC's performance criteria, which has been widely accepted by the field and other funders and which is too helpful a tool to be replace (unclear if that is the intention).

Increasing LSC's federal funding is not as prioritized as it was in the earlier plan, (Strategic Directions 2006-2010). IOLTA funders know all too well that LSC dollars provide an important base on which other funding is built – especially true

now with decreased IOLTA and other state/local funding. The prior plan named two areas for increased funding – the federal government and, for projects of national significance, the private sector. Those were appropriate focus areas. The new plan seems broader in establishing more general private fundraising, including with foundations. Depending on how this would be implemented, I would be concerned that approaching foundations for more general funding could be in competition with grantees and other justice system stakeholders for whom foundation support is an increased need due to other resources declining. If LSC proceeds with this initiative, it should define its carefully to avoid the perception or reality of competition.

LSC has long collected best practices and resources to assist grantees in improving operations. The emphasis on continuing this approach to promote best practices is good in the new plan, except that I fear the training initiative may duplicate efforts of existing entities who already conduct training free of restrictions that benefits the entire legal aid community. To the extent that new training is needed, these entities may be in a better position to be responsive to emerging needs. Another reason LSC should avoid being too much in the training business is that training events could be perceived as promoting values about representation that could prompt questions given today's political environment (this concern could also apply to research). But, LSC remains in a good position to promote best practices by continuing to collect and provide information, being a convener (LSC has been an effective convener, e.g. TIG Conferences) and working as a strategic partner with others who can provide in-depth training.

In summary, I worry that this vision could unnecessarily compete with others in an era of limited resources, that some areas (e.g., metrics, fundraising, etc.) may not have been thought through enough and that LSC's administrative resources will be too limited to adequately support the breadth of this plan. I think the plan needs to be reviewed further regarding the issues I have mentioned before it is adopted.

Again, apologies for the summary fashion of this email - I have to stop now while I can hit send as my Internet connection has already crashed several times as I tried to write this from a remote area in northern Michigan.

I look forward to seeing you soon in Ann Arbor. Linda

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MEMORANDUM

TO: Richard L. Sloane, Chief of Staff and Special Assistant to the President

FROM: David C. Maddox, Assistant Inspector General for Management and Evaluation 
Daniel Sheahan, Program Evaluation Analyst 

THROUGH: Jeffrey E. Schanz, Inspector General 

DATE: July 12, 2012

SUBJECT: Comments on the Draft Legal Services Corporation Strategic Plan 2012-2016

Introduction:

The Office of Inspector General (OIG) applauds the Legal Services Corporation (LSC) Board and Management for the good leadership in putting forward this thoughtful draft Strategic Plan to create a common vision by which the Board, Management, the OIG and other stakeholders can organize around to guide future directions and resources. We are excited by the positive themes brought forward in the plan including leadership, increasing the quantity of legal services, accountability, responsibility and transparency.

We offer these comments to assist LSC in a positive manner to increase the efficiency and effectiveness of the operations of LSC and its grantees and to prevent fraud, waste and abuse as is the OIG mission.

The OIG offers these comments during the public comment period while recognizing our independent reporting responsibilities that may require the OIG to assess LSC performance of its mission if requested to do so by the Congress. This memorandum is not a standard OIG report and does not contain recommendations that must be considered by LSC. Further these comments

were not developed by the professional standards applicable to most other OIG projects. Please consider our comments to be advisory in nature only.

Areas for Consideration:

1. Establishing an Annual Performance Cycle. The plan could set out a commitment of a formal annual management performance cycle so that many of the aspirations and strategies of the plan do not fall through the cracks. The long-term success of a strategic plan is likely based on the annual implementation, deployment of resources and performance of program strategies. The cycle used by federal funded organizations is based on the Government Performance and Results Act (GPRA) and modernization revisions. The GPRA requires government agencies to develop multi-year strategic plans, and to submit annual performance plans with their budget requests, along with a report on the previous year's performance results in terms of that year's plan; thus, integrating the organizational planning, performance and budget management cycle. Previously LSC made a public commitment to become more GPRA-like, but failed to follow through, potentially leading to harmful performance effects.¹ As an organizational management strategy best practice, we encourage the formalization of annual LSC performance plans to define the future year's performance goals, activities and resource levels, express the performance indicators to be used to measure validated results, and detail results in reaching the performance goals at the end of each fiscal year in a performance report.
2. Self-Assess the Plan. In May 1997, the United States General Accounting Office (now the United States Government Accountability Office) (GAO) prepared a document entitled "Agencies' Strategic Plans under GPRA: Key Questions to Facilitate Congressional Review." Appendix I contains a list of GAO questions designed for Congressional staff to ask federal agencies about the agency strategic plan. In preparation for your discussions with LSC oversight committees and LSC's own assessment of the strengths and weakness of the draft plan, we encourage you to examine these questions.
3. Grant Making Excellence. LSC as a grant-making organization needs to ensure it is following grant making best practices. A formal program to reach out and compare itself to other grant-making organizations would

¹ LSC Board of Director's Semiannual Report to the Congress, April 1, 1997 - September 30, 1997. "Although LSC is not a federal agency, and thus not subject to GPRA, it has elected to follow a planning process based upon GPRA, to bring its budget processes into conformity with those of federal agencies and, more importantly, to promote sound management and effective realization of the Corporation's mission."

help to ensure LSC is an outstanding grant maker. Such organizations could include quasi-federal and non-profit organizations whose grants serve both entirely different populations and the very same populations as LSC grants so that LSC keeps an eye on the grant making universe and best practices.

4. Challenges. LSC faces a number of functional challenges that could impede success of the plan unless more specific strategies are designed to overcome them. These challenges and strategies may be worthy of consideration for further expansion in the plan or future annual performance plans.
 - a. Information Management\Technology – This is of strategic importance to the success of this plan and plays a role in every goal or initiative identified. To support these efforts, LSC should give serious consideration to creating an executive-level information management\technology department, headed by a Chief Information Officer (a senior management official²). This official's charge would be to architect internal LSC information management and technology operations as well as initiatives in the larger national legal services delivery system(i.e., to create a national legal aid technology investment plan, and to assist with the creation and collection of improved grantee performance data.) Some consideration could also be given to creating a Board Technology Committee or Information Technology Investment Review Committee to oversee this critical area in helping LSC grantees serve more eligible persons.
 - b. Performance Management and Accountability – As clearly identified in the plan, LSC must develop and effectively use better and more reliable performance data to determine its program effectiveness and that of its grantees, empower more informed grant making and administration decisions, and produce a more effective business case message in support of the LSC mission. We highlight this here only to emphasize that this has been a continuing historical challenge for the organization and needs a skilled, focused and innovative solution.
 - c. Compliance – Ensuring regulatory as well as financial compliance is one of the fundamental roles LSC plays as a federal funds grants manager. Program compliance is a statutory obligation that historically has been a major concern of Congressional oversight committees and is the responsibility of both LSC and the grant recipients. A review of LSC and grantee based compliance

² Such CIO positions have long been required by law at many federal agencies and entities.

programs along with the regulatory review process could be given some consideration for inclusion to ensure an effective compliance effort. We note very minimal coverage of the compliance function in the draft.

- d. Resource Management– This is an underlying supposition of the plan, and as a steward of federal funds, LSC and its grantees must strive to get the greatest value for the public dollar spent; thus allowing more clients to be served. The plan could consider a strategy to improve resource management to better integrate budget, resources, plans, actions and results via the use of activity based cost accounting, so the cost (including human resource costs) of all operational activities, cases or projects are visible. This would lead to greater accountability in resource allocations and allow LSC to determine if the value to customers outweighs the costs of production. Internal application of such activity based reporting could reshape LSC’s managerial accounting reporting, which possibly could lead to cost savings through process elimination or improvement.
 - e. Human Capital Management – The importance of managing human capital, hiring, training and retaining a competent and motivated workforce cannot be overstated. Creating official career development paths and training programs for the various professions employed by LSC could be considered as well as commitments to make LSC into more of a performance-based employer.
5. Opportunities. The plan may wish to consider a more expanded view of coordination with other federal organizations³, as there are opportunities for a number of enhanced strategic collaboration and coordination efforts on a number of different fronts. As a federal OIG, the OIG can help via a coordination role to bring entities together in an effort to improve organizational effectiveness and efficiencies. From a quick review, we identified the following possible federal partners that serve many of the same populations as LSC:
- a. DOJ (Legal Assistance for Victims Grant Program, Rural Domestic Violence and Child Victimization Enforcement, President’s Family Justice Center Initiative grant, Older Americans Act, Native American Rights Fund, Farm Counseling);
 - b. HUD (Fair Housing Initiative Program, Farm Worker Housing, Housing Counseling, Continuum of Care Homeless Assistance Programs);

³ See the draft Plan at the bottom of page 5.

- c. USDA (Food & Nutrition Service); SSA (Office of Employment Support Programs); and
 - d. HHS (Administration on Aging, Rural Doctor Health Services and Administration for Children and Families' Migrant Head Start, Community Economic Development Programs, Office of Minority Health, etc.)
6. Facilitator Role. The plan could consider that LSC, via its leadership role, is positioned to work with legal aid providers, equal access to justice commissions, the courts and others in facilitating state based strategies to improve the availability of legal services. One common area of collaborative emphasis could be advocating for greater simplification and standardization of legal forms so that automating the production of all forms would become more economically viable through the economies of scale.
7. Research and Analysis. The plan highlights several areas to identify current best practices in the field and goes further to describe a new research function. The OIG supports the identification of this need to consider a new way to increase program effectiveness through a variety of research and analysis areas.⁴ Such topics could include: the effectiveness of different intake and legal services delivery methods (such as a voucher system in rural areas that may be losing offices as a result of decreases in funding); cost/benefit analyses of the most promising Technology Initiative Grant projects for possible further replication; identification of the characteristics of a model legal services office, effectiveness testing of performance based concept grants and general innovation grants beyond those directly associated with technology; research of sliding client fee scales based on ability to pay to provide a better economic foundation for legal aid, thus expanding the quantity of persons served. The results of such studies with adequate methodological rigor could help find innovative ways to maximize the uses of scarce financial resources and provide increased knowledge to shape future LSC policy and improve effectiveness of the civil justice system for LSC's target population.
8. Direct Comments:
- a. Page 1. "Since April of 2011, LSC's federal appropriation has been reduced by 18 percent." By our math the 18 percent decline is in the basic field line of the appropriation and not the entire federal appropriation, which had a slightly lower decline percentage.

⁴ See OMB's May 2012 Memo (M-12-14) "Use of Evidence and Evaluation in the 2014 Budget"; http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-14_1.pdf, which includes a number of evaluation initiatives with particular relevance for LSC consideration.

- b. Please clarify the use of “peer-reviewed” professional standards of fiscal transparency and accountability in the following statement on page 4:

“Both to live up to that trust and to justify further confidence, LSC will be a prudent steward of the resources allocated to it. LSC will comply with the parameters expressed by Congress and conform to the highest peer-reviewed professional standards of fiscal transparency and accountability, both within the Corporation and in its fiscal oversight of those who receive funds from LSC.”

- c. Page 14. Use of “LSC Office of Inspector General (OIG)” is not required. A simple reference to the Office of Inspector General (OIG) would be understandable.

APPENDIX I

QUESTIONS DEVELOPED BY GAO FOR CONGRESS TO ASK AGENCIES REGARDING STRATEGIC PLANNING

Questions about Mission

1. Is LSC's mission results-oriented, and does it fulfill a public need? If not, how could the mission better focus on results?
2. Is the mission based on statute, and if so, does it cover all relevant statutes and does it meet with Congressional intent and expectations?
3. Are parts of LSC's functions or activities not covered in the mission statement? Why?
4. Are there developments that suggest the mission and corresponding legislation need to be revised or updated?
5. Is LSC's mission similar to those of other entities, and if so, has coordination occurred? Does unwarranted duplication of missions exist?
6. How is LSC's mission differentiated from those of other entities with similar missions? Are there unique LSC characteristics that give it an advantage in fulfilling its mission, such as location or staff expertise?

Questions about Goals

1. Do the goals cover the major functions and operations of LSC? If not, what functions and operations are missing? Are the goals logically related to the mission?
2. Are the goals results-oriented (such as reduce workplace accidents) or are they focused more on outputs (such as inspecting more workplaces)? If so, why?
3. If the goals are not expressed in a quantitative or measurable form, are they expressed in a manner that will allow LSC and Congress to assess whether the goals are achieved?
4. Are all of LSC's goals and priorities consistent with Congress' goals and priorities? When differences exist, why do they exist, and can they be resolved?
5. Do LSC's goals appear similar to the goals in plans of other entities that are performing related activities? If so, are these sets of goals complementary or duplicative?

Questions about Objectives and Strategies for Achieving Goals

1. How are the objectives to be achieved? Are the strategies logically linked to the objectives and the day-to-day activities of the managers and staff? Are they consistent with historical resource trends?

2. What steps will LSC take to align its activities, core processes, workforce, and other resources to support its mission-related outcomes?
3. What are the required resources, such as human, capital, and information? Are new regulations or legislation required?
4. What steps is LSC taking to ensure that managers have the authority they need to achieve results? Are there strategies to hold managers accountable for the results? Are there any strategies that focus on providing incentives for managers and other staff to achieve the goals?
5. Do managers have the knowledge, skills, and abilities to implement GPRA? If not, what strategies are needed to develop the necessary capacity?
6. Are technological advances necessary to successfully execute the strategies? If so, how likely are those advances?
7. What, if any, alternative strategies were considered?
8. Are there programs or activities that need to be eliminated, created, or restructured to achieve the goals?

***Board Authority to
Appoint Non-Directors***



BOARD OF DIRECTORS

RESOLUTION

DELEGATING AUTHORITY TO APPOINT NON-DIRECTORS TO COMMITTEES OF THE LSC BOARD OF DIRECTORS

WHEREAS, the Bylaws of the Legal Services Corporation (“LSC” or “Corporation”) provide that the Board of Directors (“Board”) “may appoint and designate or may delegate to the Board Chair the authority to appoint Directors or non-Directors, as appropriate, to serve on committees . . . [;]”

WHEREAS, the Bylaws also provide that “[a]ny non-Director may be appointed to serve as a voting or non-voting member of a committee, as determined by the Board or, if the appointing authority has been delegated, by the Board Chair[;]” and

WHEREAS, the Board has determined that having non-Directors with appropriate backgrounds and expertise serve on committees is prudent and that they would be helpful to the Board in discharging its responsibilities;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the Bylaws, the Board hereby delegates to the Board Chair the authority to appoint non-Directors, as appropriate, to serve on the various committees of the Board; and

BE IT FURTHER RESOLVED that the Board Chair is further delegated the authority and discretion to designate each such appointment as voting or non-voting.

Adopted by the Board of Directors
on July 27, 2012

John G. Levi
Chairman

Victor M. Fortuno
General Counsel & Corporate Secretary