



OFFICE OF THE PRESIDENT

## MEMORANDUM

**TO:** LSC's Board of Directors

**FROM:** Richard L. Sloane *RLS*  
Chief of Staff and Special Assistant to the President

**DATE:** July 23, 2012 (revised on August 2, 2012)

**SUBJECT:** Summary of Public Comments on Draft Strategic Plan

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The Corporation's Board of Directors directed Management to solicit public comments on the draft Strategic Plan (2012-2016) (draft Plan). In response, Management placed notice in the Federal Register, with the comment period scheduled to close on July 11, 2012. To date, Management has received twenty-one comments. They are briefly summarized below. Full copies of those comments are located on LSC's website under the heading "Matters for Comment" – available at the following link: <http://www.lsc.gov/about/matters-comment>. Note: Hard copies of Comments #1-18 are included in the materials prepared in advance of the July 2012 meeting of the Board of Directors (Board Books). Copies of Comments #19-21 are attached to this memorandum.

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

**1. Comments of Iowa Legal Aid (July 9, 2012; submitted by Dennis Groenenboom, Executive Director):**

- The comments caution that LSC should not create outcome, efficiency, and needs assessment metrics as national standards. To do so likely would result in a "one-size-fits-all" approach that would interfere with the local priorities and circumstances of individual programs.
- LSC's Plan should recognize the potential impact of national measurement standards on a program's ability to provide services. Likewise, the Plan should include a goal, to the extent possible, to eliminate unnecessary recordkeeping and reporting while, at the same time, streamlining other reporting requirements where possible and appropriate. In general, the comments recommend that the Strategic Plan focus on reviewing, revising, and eliminating unnecessary reporting requirements by grantees.

- The comments note that 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.” Current funding would need to be \$1.1 billion to be equivalent to the inflation-adjusted level of funding in 1980. The comments encourage the development of a strategy to increase federal funding – including “working in collaboration with supportive organizations to identify and nurture relationships with members of Congress....”
- With regard to the draft Plan’s discussion of grantee training, peer support, and collaboration programs, the comments offer a reminder of existing resources – including the American Bar Association (ABA), National Legal Aid and Defender Association (NLADA), and Management Information Exchange (MIE).
- The comments recommend that financial incentives for certain “top performing organizations” not be included as part of the Plan. The concern is that such an approach would jeopardize LSC’s commitment to providing an equal amount of funding per poor person throughout the country.
- The Plan should focus more on succession planning issues, as a large percentage of Executive Directors of LSC’s grantees have served for 30 years or more – meaning that many may well retire in the next five years.
- LSC should reevaluate the focus of the Technology Initiative Grant (TIG) program to focus more on expanding the availability of proven technological innovation.

**2. Comments of American Bar Foundation (July 9, 2012; submitted by Dr. Rebecca Sandefur, Senior Research Social Scientist):**

- Dr. Sandefur affirms and applauds the draft Plan’s three strategic goals. She supports emphasis on empirical research.
- Dr. Sandefur observes that research efforts “must be multi-tiered and wide ranging” – to evaluate specific programs and services, as well as to develop a “broader understanding of the contexts in which people do or do not have access to justice.” In this regard, she notes that, to date, much more research has been done with regard to the criminal justice system than the civil justice system. Likewise, existing data on how available civil legal services are produced, funded, and priced are limited.

**3. Comments of Midwest Project Directors (July 9, 2012; submitted by Michael O’Connor, Executive Director of Prairie State Legal Services and Chair of Midwest Project Directors Group):**

- Midwest Project Directors is a group of Executive Directors of 21 LSC-funded programs throughout the plains states, the Midwest, and nearby regions.
- The comments are limited to areas of concern to the Executive Directors.
- A national system of quantitative metrics should not be considered, as it would result in a “one-size-fits-all” approach that “cuts against local priority-setting and local control.” The strategy is likened to other “well-intentioned, but ultimately disappointing” programs such as “No Child Left Behind.” The comments call for the creation of *local* standards – not national.

- A monetary reward/penalty system based on merit would be ineffective and would adversely affect equal justice under law. Legal service practitioners are not driven by financial rewards. Their motivation is based in helping more clients, and providing the highest-quality representation to those clients. The monetary reward/penalty system as outlined would result in “unequal justice” and “appears to be heading toward a quota system, a stressing of numbers over quality.”
- 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. To jettison LSC’s current Performance Criteria in favor of “quantitative metrics” would be “terribly wasteful, inefficient, and disruptive.”
- Legal services programs are not abandoning the rural poor, as the draft Plan’s comments about recent office closures might be read to suggest. The comments recommend including a statement noting that funding reductions affect all served populations, and that LSC is committed to increasing funding. The comments suggest adding the following language: “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.”

**4. Comments of Richard Zorza (July 10, 2012):**

- The comments are divided into two sections: sixteen observations and four recommendations. Overall, Mr. Zorza believes that the directions envisioned by the draft Plan are “excellent.”
- Mr. Zorza comments positively on the following aspects of the draft Plan: promoting technology and informational services; increasing efficiency through innovation during times of scarce resources; LSC’s commitment to performance measures (outcome metrics) is “revolutionary”; to minimize the burden on grantees, LSC is committed to online data collection; specific rewards and corrective actions (financial and otherwise); the establishment of a communications strategy to make a business case for funding legal services; and broadening funding horizons to look beyond an annual Congressional appropriation.
- The Plan is ambitious. Zorza suggests making a commitment to the development of timelines for implementation of these initiatives.
- Mr. Zorza recommends expanding the discussion of staffing issues. Mr. Zorza calls for additional details with regard to “staffing realignment” – especially at senior levels in the organization. Zorza calls for the appointment of a Chief Information Officer (CIO) to “take leadership of the information strategy.”

**5. Comments of Legal Aid of Western Missouri (July 10, 2012; submitted by Gregg Lombardi):**

- Mr. Lombardi supports the comments of the Midwest Project Directors' group.
- Mr. Lombardi's comments concur with the Midwest Project Directors on one point, and applaud LSC's proposed Plan on another.
- Concurrence: Lombardi shares the Midwest Project Directors' concern about providing special additional funding for programs that LSC concludes have developed best practices. Mr. Lombardi notes that LSC's basic field funding accounts for "less than 20% of [his] program's funding" – and that the program has more than 40 different funding sources. Of all of the program's funders, LSC is the only one that insists that the program comply with all of LSC's requirements – regardless of whether the work is funded by LSC or another source. Mr. Lombardi suggests that any additional funding should fund programs that have not implemented best practices "so that they can implement best practices that already have been developed by another program."
- Mr. Lombardi applauds LSC for emphasizing "research on the best methods for quantifying the cost savings realized by the outcomes achieved." Legal aid programs focus their work on several practice areas that have significant, quantifiable benefits – including reducing domestic violence, securing housing for the homeless, and Medicaid appeals. Demonstrating the economic and related benefits of legal services work will be useful – and persuasive – in seeking funding for ongoing operations.

**6. Comments of Legal Aid Society of Cleveland (July 10, 2012; submitted by Colleen Cotter):**

- Ms. Cotter was surprised that the draft Plan did not list as a goal increasing the Congressional appropriation.
- With regard to the draft Plan's third initiative (provide legal practice and operational support to improve measurably the quality of civil legal services to the poor; page 8 of draft Plan), notes that much of what is described is currently being done – at least in part – by other organizations.
- Regarding the "matchmaking" idea (page 9 of draft Plan): Broaden this idea. Don't limit it to more junior and senior matchings; rather, look for opportunities for two Executive Directors to learn from each other.
- Suggested edits: Use of the term "programs" is outdated; instead, recognize that each LSC grantee is an independent organization; add "other federal funding" to the list of funding sources; the reference to a 2% decrease in non-LSC funding in 2011 is misleading, as it provides too narrow a snap-shot of recent history; some programs have seen funding decreases in range of 25-50% since 2007 and IOLTA decreases.

**7. Comments of American Bar Association's Standing Committee on Legal Aid & Indigent Defendants (SCLAID) (July 10, 2012; submitted by Robert Stein):**

- **Quantitative Metrics:** Developing quantitative metrics is complex. SCLAID strongly supports assessment of outcomes achieved – although local variations in approaches to

measurement appear to be necessary. Outcomes are a crucial measure of the success of a legal aid program.

- **Efficiency Metrics:** It is much more difficult to measure the efficiency of the use of funds in legal aid. Efficiency must take into account both the number of results achieved as well as the broad impact of those results. Such an analysis should consider the impact on persons eligible for assistance from a legal aid program, but who may not yet have applied for such assistance. Accordingly, a result for a particular individual client that sets an important precedent very well could be far more “efficient” than the pursuit of hundreds or even thousands of individual lawsuits.
- SCLAID urges LSC to proceed with caution in developing any such quantitative metrics – as they might appear to reward performance that “involves large amounts of mundane legal work to the exclusion of a smaller quantity of more resource-intense legal advocacy that achieves results with much broader and more lasting impact.”

**8. Comments of D. James Greiner, Professor of Law, Harvard Law School (July 10, 2012):**

- LSC's draft Plan is ambitious and inspiring. Implementation will require strong leadership, as well as information and knowledge derived from strong research. The process begins by asking the question: "What do you not know that you wish you knew?" The need for research is great. There is a "startlingly limited" amount of information currently known about the civil justice system in the United States.
- Information and knowledge produced by strong research methodology will not always be popular. To be effective, the research process must include a willingness to reexamine notions popular with its grantees. This will include evaluation of best practices, assessments of need, and other programmatic efforts. The research must come from "researchers who are not beholden to LSC or its grantees" -- and researcher independence is of paramount importance.

**9. Comments of Coalition of Connecticut Programs (July 11, 2012; submitted by Steven Eppler-Epstein, Executive Director of Connecticut Legal Services):**

- The commenters support the draft Plan's three primary goals, as well as the following related initiatives: promoting best practices and supporting program enhancement (related to the first goal of maximization of services); the second goal and its related initiatives (serving as a leading voice for access to justice); and the third goal and its related initiatives (superior LSC fiscal management). With regard to the goal of securing additional sources of funding, the comments support such an initiative – so long as additional fundraising efforts do not compete with the ongoing fundraising efforts of local legal services providers.
- The comments propose the inclusion of a statement that LSC will lead efforts to close the Justice Gap identified in the draft Plan. Specifically, the commenters recommend that LSC “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.”

- Any efforts to measure the efficiency of legal aid programs should take into account tailored criteria – unique to individual grantees – including the difficulty of the cases undertaken, the potential impact of the cases, the difficulty of the client’s circumstances, the challenges posed by the legal decision-making environment and the legal opposition, and the costs of operating in a particular geographic area. There is no “one-size-fits-all” approach.

**10. Comments of Wayne Moore (July 11, 2012):**

- In addition to submitting comments on the draft Plan, Mr. Moore submitted a short biography and an article discussing opportunities for legal-service providers to avoid service reductions by improving efficiency and effectiveness.
- Mr. Moore’s comments, like the accompanying article he authored, focus on opportunities for legal services programs to improve efficiency and effectiveness during times of strained budgets and shrinking resources. Mr. Moore’s observations note a wide range of performance among grantees – some with serious performance problems while others are very efficient and effective. He notes that his observations and recommendations are based on more than thirty years of experience in the field of legal services. If properly implemented, Mr. Moore believes that LSC’s draft Plan will result in necessary reforms.

**Goal One: Maximize the availability, quality, and effectiveness of legal services.**

- **Initiative One:** Identify, promote and spread best practices. Mr. Moore labels this initiative as “admirable”, but cautions against confusing innovation with best practices.
- **Initiative Two:** Implement a new performance management system. This initiative consists of three distinct activities: Establishing performance standards for quality, effectiveness, and efficiency; developing metrics and a data collection process for measuring these factors; and creating an effective enforcement mechanism for ensuring that performance standards are met and performance data are satisfactory.
- Mr. Moore makes various recommendations regarding evaluative criteria to be employed, including: focusing on quality control measures; using work plans to manage diverse range of services; and ensuring that client materials (including websites) are drafted at an appropriate reading level for the intended audience.
- **Effectiveness Standards:** LSC’s current Performance Criteria mention effectiveness, but additional criteria should be discussed, including the use of volunteer lawyers (sometimes more expensive and yielding lower quality work than specialized, paid staff); a majority (58%) of cases closed with advice and brief services require extended services to obtain best outcome for clients; LSC grantees, on average, obtain more uncontested court decisions than contested decisions; some programs handle very few litigations or appeals (yet the potential impact of such cases can be enormous).
- **Efficiency Standards:** Mr. Moore anticipates that this topic will yield the most controversy and push-back from grantees – yet this is the area that requires the most attention. (Under the billable-hour model, efficiency never has been a high priority in the legal profession. In recent years, however, there are signs that this is beginning to change.)

- **Goal Two: Establish metrics for measuring and analyzing quality, effectiveness and efficiency:** LSC should be prepared for considerable resistance regarding this goal. Grantees have resisted the reporting of outcome measurements for the past ten years. Despite the wide-ranging potential benefits of relying on metrics, there is significant opposition to imposing national standards on highly specialized programs. Several metrics already collected can help evaluate grantee efficiency, including total cases closed (and percentage of key service cases), annual billable hours per advocate, and average hours per case closed. Similar categories of data could and should be collected to evaluate grantee effectiveness, including percentage of key services, percentage of cases closed by volunteers, number and percentage of attorneys that do not accept cases in a given year, percentage of cases closed with advice or limited action that require more extended services to obtain best outcomes for clients, percentage of uncontested (versus contested) court decisions, and client satisfaction surveys.
- **Goal Three: Establish performance triggers:** The proposed “carrots and sticks” are good ones – including the ability to withhold 5% of funding, imposition of corrective grant conditions, and awarding provisional grants. Mr. Moore also proposes the possibility of allowing the division of a service area between two grantees: one to handle advice and brief services, and the other to handle remaining cases. Examples of such strategies have worked effectively in New Hampshire, Vermont, and Connecticut.
- **Initiative Three:** Provide support to improve quality of services. Mr. Moore supports the various proposed activities in relation to this initiative, including training on best practices (such as hotlines, pro bono programs, and pro se workshops); grants to develop or license existing document generators; grants to develop intake protocols to match clients with needed services; grants to evaluate ways to use volunteer lawyers better; and research to determine types of legal problems that, left unresolved, tend to trigger other legal problems.

**11. Comments of Legal Services Association of Michigan (July 11, 2012; submitted by Ann Routt and Mike Chielens, Co-Chairs)**

- Legal Services Association of Michigan (LSAM) is comprised of the 13 largest legal services providers in Michigan, including all six LSC-funded grantees.
- While LSAM supports the concept of a strategic plan and supports many suggested proposals in the draft Plan, LSAM finds the draft Plan to be a “radical change in the purpose of the Corporation” – one with which LSAM disagrees. Therefore, LSAM urges that LSC not act on the draft Plan at the July 2012 meeting, and, instead, that LSC consider revisions to the draft Plan on the following topics.
- **Increase federal funding for grantees:** This was a stated goal in LSC’s Strategic Plan issued in 2006. LSAM considers this to be a “primary obligation to the nation and to the field” – but language to that effect was not included in the draft Plan.
- **Changing Role of LSC:** LSAM is concerned that the draft Plan moves LSC away from its historical roles of funding and regulating its grantees into a series of new initiatives and services that will create a larger and less efficient administrative structure.
- **Performance Management Systems – Including outcome metrics, efficiency metrics, and performance triggers:** LSAM recognizes the benefit of outcomes

reporting and has been experimenting with outcome measurement systems since at least 2005. LSAM encourages LSC to view this project as a partnership with the field. LSAM advises against “efficiency metrics” and against financial awards for “high performing” programs.

- **Grantee Training (proposed addition of best practices training, peer support and collaborative programs, and management support):** LSAM opposes the expansion of LSC’s work in providing training and support services. LSAM notes that several other entities provide national training services – including NLADA, the ABA, and MIE. Likewise, LSAM concludes that these are inappropriate roles for LSC and would require a dramatically expanded administrative structure for LSC.
- **Fundraising:** LSAM concludes that it will not be possible for LSC to create and promote an institutional advancement division without competing for funding with its grantees. Separately, even if LSC were to try such an approach, LSAM questions whether LSC would be successful in fundraising.

## **12. Comments of Doug German (July 11, 2012):**

- Mr. German is the former Executive Director of Legal Aid of Nebraska (2000-2008).
- Mr. German notes that, at one time, the state goal of federal legal aid programs was the reduction of poverty. By contrast, the current focus has shifted to access to justice. Mr. German characterizes the “access to justice” goal as elusive and difficult to measure.
- Mr. German is in favor of identifying metrics to measure progress – including, for example, tracking poverty rates of program clients over time. To be meaningful, access to justice should translate into improvement of people’s lives – an important goal not only for individual clients, but also for taxpayers and the citizenry at large.

## **13. Comments of Gerry Singsen (July 11, 2012):**

- Mr. Singsen has been working in legal services since 1968 (when he began his legal services career as a Reginald Heber Smith Fellow), and, over the past 44 years, has worked in a variety of roles tied closely to the development and evolution of LSC.
- Mr. Singsen’s comments provide a broad historical overview of legal services. Mr. Singsen believes the current environment is similar on many levels to the early years of the Reagan era. He says that if he is correct in his assessment, the draft Plan will require some modification.
- Mr. Singsen notes that LSC’s staff is considerably smaller than in the early 1980s, and the Corporation’s budget, when adjusted for inflation, is about 40% of its 1981 equivalent. Likewise, in 1980, LSC provided 80% to 90% of total funding for the legal services. In 2012, LSC provides approximately 25%. In short, Singsen notes that the goals and objectives of the draft Plan should be viewed in the context of scarce resources and wide-ranging political limitations.
- Despite these challenges, Mr. Singsen notes that there are “at least three strong currents flowing toward more justice for low-income individuals with legal problems.” First, civil legal services has grown into a mature institution over the past 45 years. Second, the systems through which people assert their rights and seek out justice are being reconceived. Third, the financial future actually may be improving – if legal services

moves away from dependence on annually appropriated government funding toward a more complex but healthy menu of funding sources.

**14. Comments of Alan Ells (July 11, 2012):**

- Mr. Ells is a former Executive Director of legal services programs and has nearly 40 years of experience in legal services.
- Mr. Ells supports the implementation of outcome-based evaluation of the effectiveness of legal services. He cites United Way as an example of a successful use of grantee-developed outcomes measurements. Mr. Ells counsels that it is critical to involve grantees in the development of such measurement, with clear direction from LSC.

**15. Comments of National Legal Aid and Defender Association (NLADA) (July 11, 2012; submitted by Dennis Groenenboom and Don Saunders):**

- NLADA's comments begin by noting the severe impact of the long and deep economic recession – resulting in 64 million people living at or near the poverty level in the United States.
- NLADA supports many of the objectives in the draft Plan, and limits comments to areas of concern.
- **Goal 1: Maximizing the availability, quality, and effectiveness of legal services.**
  - **LSC Funding:** Consistent with NLADA's recent submission to LSC regarding the recommended level of LSC funding for Fiscal Year (FY) 2014, NLADA believes that LSC's most important function is advocacy in Congress for more funding. While the current draft Plan makes mention of society's promise of equal justice for all Americans, NLADA believes that the Plan's language should be more explicit – stating a vision, rationale, and clear statement of the need to increase funding.
  - **Best Practices:** NLADA supports LSC's focus on identifying and promoting best practices to maximize the effective delivery of legal services and notes the wide continuum of services provided. NLADA recommends the addition of a diversity statement to the draft Strategic plan – mirroring the diversity statement on LSC's website – as follows: *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.*
  - **Performance Management:** NLADA expresses concern about the role – if any – of LSC's existing Performance Criteria as a quality assessment tool going forward. The criteria are not mentioned in the draft Plan. More significantly,

NLADA expresses concern regarding the Plan's draft language with regard to quantitative metrics – criticizing a system of national outcome measures that would be applied identically to LSC's 134 grantees. NLADA also cautions that the proposed efficiency metric would create a “one-size-fits-all” system that “would unduly stress the importance of case numbers over other, reasonable measures of quality.”

- **Operational Support:** NLADA notes that other organizations – both inside and outside the legal services community (e.g., NLADA, MIE, the Shriver Center, etc.) – provide training in areas discussed in the draft Plan. NLADA suggests that training for grantee boards be expanded to include a wider array of board governance training than simply LSC-specific training issues.
- **Goal 2: Becoming a leading voice for access to justice and quality legal assistance in the United States.** In the development, cultivation, and delivery of a compelling narrative on access to justice, NLADA encourages that poor people and community voices be included in the process. Likewise, as LSC continues to explore fundraising options outside of government funding, NLADA appreciates the draft Plan's sensitivity to avoiding competition with funding sources that might otherwise provide funding for grantee operations.
- **Goal 3: Ensuring superior fiscal management.** NLADA underscores the fact that LSC's grantees are staffed by “thrifty, hardworking and underpaid advocates” operating in under-resourced programs. While fiscal management is, of course, an important goal of the draft Plan, NLADA encourages LSC to ensure that grantees are equipped with adequate resources to effectively do their jobs.

**16. Comments of Legal Services New York City (Legal Services NYC) (July 11, 2012; submitted by Raun Rasmussen and Andrea Zigman):**

- Legal Services NYC strongly supports LSC's draft Plan. The comments provide an overview of Legal Service NYC's program and work (focusing on protecting housing, strengthening families, gaining access to education and health care, and securing and safeguarding subsistence income).
- Legal Services NYC stresses that too many of New York City's poor people do not have access to the justice system. According to census data released in 2011, 20% of New York City's residents are living in poverty, and 40% live below 200% of the federal poverty limit. The State's Task Force to Expand Civil Legal Services, under the leadership of Chief Judge Jonathan Lippman, notes that, at best, a small fraction (only 20%) of the legal needs of New York's poor is being met. The Task Force found that the unmet need for civil legal assistance is “costing taxpayers millions of dollars by increasing homelessness, failing to prevent domestic violence and increasing poverty.”
- Legal Services NYC's LSC funding is being “slashed” from \$17.5 million in 2010 to less than \$10 million – leading to staff cuts and office closings. Legal Services NYC appreciates LSC's commitment to helping programs identify and access other sources of funding. Likewise, identifying a “business case” for legal services is critical.
- Legal Services NYC cautions 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.... Metrics should support the delivery of services with proven results.”

**17. Comments of Michigan State Bar Foundation (July 12, 2012; submitted by Executive Director Linda Rexer):**

- Ms. Rexer expresses concern that the draft Plan is unrealistically ambitious, especially in light of current funding challenges. For example, if quantitative output requirements are not implemented with adequate support, administrative costs might increase.
- **Quantitative Metrics:** The draft Plan appears to go “further than the outcomes group discussed or the [Public Welfare Foundation] grants seemed headed for.” Likewise, Ms. Rexer believes that the field needs to be involved in testing new outcome measures, possibly through pilots and other models. It is unclear what ongoing role there will be for LSC’s existing Performance Criteria.
- **Increasing Federal Funding:** Rexer notes that increasing LSC’s federal funding is not prioritized in the current draft Plan to the extent that it has been in prior strategic plans. Likewise, there is a risk that approaching other funding sources (e.g., private foundations) might translate into competition for funding with existing grantees and other justice system stakeholders.
- **Best Practices:** Ms. Rexer notes that LSC “has long collected best practices and resources to assist grantees in improving operations.” Training initiatives discussed in the draft Plan may “duplicate efforts of existing entities who already conduct training free of restrictions that benefits the entire legal aid community.” Ms. Rexer encourages LSC to continue to work as a strategic partner with other organizations to provide in-depth training, as well as continuing to collect and provide information on best practices and convene conferences (e.g., the annual TIG conference).

**18. Comments of LSC's Office of Inspector General (OIG) (July 12, 2012; submitted by David Maddox and Daniel Sheahan, through Jeffrey Schanz):**

- The OIG’s memo is advisory in nature – and does not contain recommendations that must be considered by LSC.
- The draft Plan could set out a commitment of a formal annual management performance cycle – so that strategies identified in the draft Plan stay on track and do not “fall through the cracks.” The cycle used by federally-funded organizations is based on the Government Performance and Results Act (GPRA) and modernization revisions.
- The OIG’s memo (at Appendix I) includes a series of questions developed by the Government Accountability Office (GAO) to ask federal agencies as they consider strategic plans. The questions address several broad topics, including an organization’s mission, its goals, and objectives and strategies for achieving those goals. The OIG encourages LSC Management to examine these questions.
- To ensure that LSC follows best practices, the OIG’s memo encourages the creation of a “formal program to reach out and compare itself to other grant-making organizations....” Such comparators might include other quasi-federal and non-profit grant-making organizations.

- The OIG’s memo identifies a number of functional challenges that could impede LSC’s ability to implement its draft Plan. In the area of information management/technology, the OIG’s memo recommends creating an executive level information management/technology department, headed by a Chief Information Officer (CIO). In the area of performance management and accountability, the OIG’s memo notes that LSC must develop and harness “better and more reliable performance data” to determine program effectiveness and produce a stronger business case in support of LSC’s mission. The OIG’s memo emphasizes that 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,” but notes “very minimal coverage of the compliance function” in the draft Plan. In the area of resource management, the OIG’s memo encourages consideration of a strategy to improve “resource management to better integrate budget, resources, plans, actions and results via the use of activity-based costing so the cost (including human resource costs) of all operational activities, cases or projects are visible.” Finally, in the area of human capital management, the OIG’s memo notes that the “importance of managing human capital, hiring, training and retaining a competent and motivated workforce cannot be overstated.”
- The OIG’s memo also notes that LSC might consider “a more expanded view of coordination with other federal organizations” in the area of “enhanced strategic collaboration.” The memo goes on to provide examples of various candidates to consider at the Department of Justice, Housing and Urban Development, the Department of Agriculture, and Health and Human Services.
- The OIG’s memo supports opportunities to increase program effectiveness through research and analysis, including addressing the following topics: cost/benefit analysis of the most promising TIG projects and possible further replication, identification of characteristics of a model legal services office, and research of sliding client fee scales based on ability to pay.
- Finally, the OIG’s memo directly comments on the following three areas in the draft Plan: **Page 1:** Clarifying that the 18% decline in funding since April 2011 is in the “basic field line of the appropriation and not the entire federal appropriation, which had a slightly lower decline percentage.” **Page 4:** Requesting clarification of the use of the term “peer-reviewed” professional standards of fiscal transparency and accountability. **Page 14:** Suggest a reference to the “Office of Inspector General (OIG)” rather than “LSC Office of Inspector General (OIG).”

**19. Comments of Washington State Civil Legal Aid Funders (July 12, 2012; submitted by Jim Bamberger and Caitlin Davis-Carlson):**

- The comments begin by expressing support for LSC’s current Board and President, who have “signed on to an incredibly important effort at a time of unprecedented challenge.”
- Despite the fact that LSC is the largest single national funder of civil legal aid services, LSC – in Washington State and many other states -- is a minority funder. Thus, LSC is no longer the “principal funder” of civil legal aid in the country, though it remains a “national partner in a broad and inclusive effort to ensure access to civil justice systems for low income people.”

- States have developed “increasingly sophisticated, integrated systems” for meeting the civil justice needs of low income people – and this development is “in large part due to LSC’s encouragement.”
- With the development of state-based justice communities, “LSC should exercise caution when developing policies or undertaking strategic initiatives of national application or implication, so as not to interfere with the thoughtful development of frameworks, relationships, expectations and systems within any given state.”
- The comments suggest that LSC’s principal areas of strategic focus be redefined to include securing the maximum amount of funding from Congress to help close the justice gap and meet the civil justice needs of low-income Americans; establishing and providing training to ensure fiscal responsibility and grantee accountability to legal mandates established by Congress; working with state funding partners and LSC’s grantees to “capture, chronicle and promote best practices in the delivery of civil legal aid services”; facilitating and promoting new technology systems; and facilitating strategic partnerships with other federal entities, the private sector, and other national and state-based civil legal aid systems.
- **New Performance Management System:** The commenters are troubled by the prospect of a new performance management system. State-level funding partners have strongly cautioned against the creation of standardized “quantitative metrics” or “outcome measures” on a national scale.
- **Grantee Training:** The comments note that several training providers – including NLADA, MIE, the Shriver Center, and many others – already provide training on a wide range of skills and substantive areas of the law. The comments strongly recommend that “LSC not wade into the training arena except with respect to issues relating to legal compliance (statutory, regulatory and contractual) and fiscal and administrative accountability.”
- **Management Support:** The comments caution that “LSC may be trying to insert itself into an area that is already well served” – namely, by MIE.
- **“Leading Voice” for Access to Justice and Quality Legal Assistance:** The comments recommend that LSC play the role of strategic partner – and that the Corporation focus on collaborating, not initiating.
- **The “Business Case” for Funding Civil Legal Aid Services:** The comments note “very serious concerns” about the suggestion of building such a “business case.” The mission – justice – cannot and should not be measured “by notions of [Return on Investment] (ROI), marginal value or economic multipliers.”
- **Private Resource Development:** The comments note that several other organizations “already provide substantial advice and technical assistance in the area of private resource development” and conclude that “there is no void here for LSC to fill....”
- **Ensuring Superior Fiscal Management:** The comments “appreciate and wholeheartedly agree with the thrust of this initiative.”

**20. Comments of Management Information Exchange (MIE) (July 20, 2012; submitted by Patricia Pap, Executive Director):**

- MIE’s comments note that the draft Plan (page 8) discusses providing operational support to programs to improve the quality of legal services to the poor. MIE believes

that “excellence in management results in excellence in client services, and toward this end, MIE has provided a broad range of training, consulting and library services to the executive directors, managing and supervising attorneys, fiscal officers, administrators, fundraisers and boards of directors of legal aid programs – services that exist nowhere else in the legal aid community.”

- In conjunction with its comments, MIE submitted a brief description of its training programs. MIE would welcome the opportunity to collaborate with LSC on state-of-the-art training, building on MIE’s experience and perspective.
- The draft Plan (page 11) also discusses proposals to increase private support for civil legal services. “MIE is the only organization that has systematically provided resource development training and support to legal aid programs.” Specific training has addressed skills needed for successful fundraising and strategies for developing private sector resources. Earlier this month, MIE held its 2012 National Fundraising Conference – an event attended by, among others, 51 development staff and executive directors from 38 LSC-funded programs. MIE welcomes the opportunity to collaborate with LSC in areas of development support.

**21. Supplemental Comments of Wayne Moore (July 23, 2012):**

- Mr. Moore’s supplemental comments address the performance management section of the draft Plan, and respond to comments and concerns raised by other commenters.
- Mr. Moore’s comments identify and summarize various concerns regarding the proposed performance management initiative, including the need to consider the unique mixture of local case priorities; unique cultural, ethnic and legal environments in which programs operate; LSC’s role as a minority funder in a number of states; the diverse range of services provided by various grantees; and the overarching theme that “one-size” metrics cannot fit all grantees.
- Mr. Moore believes that these concerns “demonstrate a misunderstanding of the role that standards, metrics and rewards/penalties play in performance management.” In developing evaluative criteria for efficiency, effectiveness and quality metrics, Mr. Moore notes that “[s]ince LSC plans to use the same process for establishing the new criteria, including grantee input, there is no reason to believe that the new criteria will raise these concerns. Certainly everyone recognizes the importance of quality, effectiveness, and efficiency in program performance, regardless of the delivery systems used....”
- Mr. Moore notes that, while metrics are a “new frontier” for legal services management, they are well established in both for-profit and non-profit environments – including law firms. Without metrics, he says, important performance problems never would be discovered or addressed. He says it is much easier – and more persuasive – to motivate necessary change by relying on comparative data from other programs.
- Mr. Moore also believes that rewards and penalties must be established to address the current high degree of discretion afforded to programs to decide whether or not to adopt recommendations of evaluators.
- Mr. Moore notes – as do others in their comments – that LSC’s Performance Criteria are based in part on the ABA’s Quality Standards for the Provision of Civil Legal Aid.

They simply need to be updated to account for developments in programs, such as hotlines and assisted self-help resources.

- **Quality Metrics:** Mr. Moore notes that the main change regarding quality metrics is the reporting of case outcomes.
- **Efficiency Metrics:** Mr. Moore suggests different metrics to measure efficiency. For example, he suggests the addition of the following categories of data: (1) ratio of managers to non-manager staff attorneys and paralegals, and (2) percentage of staff other than attorneys and paralegals. Mr. Moore asserts that the addition of these metrics will identify staffing inefficiencies. Likewise, Mr. Moore recommends the addition of (1) CSR case closures per CSR advocate, and (2) percentage of cases closed by negotiation and agency and contested court decisions. These metrics would compare the efficiency of programs that handle comparatively complex cases.
- **Effectiveness Metrics:** Mr. Moore also supports effectiveness metrics and notes that LSC developed metrics for measuring impact advocacy for the Delivery System Study in the 1970s.
- **Process:** Mr. Moore notes that other commenters express concern that implementing a performance management system “will be costly and require substantial support for the grantees.” Mr. Moore believes that these concerns are unfounded, and that the new proposed performance standards could be developed using the same process that was used for LSC’s current performance criteria.

**22. Comments of Legal Action of Wisconsin (Legal Action) (July 26, 2012; submitted by John F. Ebbott, Executive Director):**

- Legal Action’s comments focus on the issue of fairly measuring quality lawyering with metrics. To illustrate the point, Mr. Ebbott summarized a recently-resolved housing case handled by Legal Action involving a family of six people. The case began more than four years ago with the denial of an application for Section 8 Rent Assistance by the Housing Authority of the City of Milwaukee (HACM). At that stage, for data tracking purposes noted in annual Case Service Reports (CSRs), the option existed for the case to close – had Legal Action elected not to pursue it further. Instead, following the initial denial, Legal Action decided to sue the HACM – ushering in years of related litigation. The case wound its way through the state trial court, court of appeals, and the state Supreme Court – ultimately settling on July 18, 2012 with Legal Action’s client gaining admission into the Section 8 Rent Assistance program and scheduled to receive \$23,500 in damages. Additionally, Legal Action will receive \$75,245.73 in attorney’s fees and costs.
- Based on Legal Action’s experience, “a large expenditure of advocacy resources, whether in litigation or short of litigation, that results in the securing of relief for a single client or family is an inefficient use of resources if the defendant (here, HACM), is free to repeat the illegal denial of our client family or to perpetuate it against others.” Legal Action has found that damages remedies – monetary awards and/or penalties – are more effective and efficient resources.
- In recounting this example, Legal Action queries how the case would be “counted” under the proposed metrics-based system outlined in the draft Strategic Plan. Would it be based on the number of people served? The number of dollars recovered? The

number of hours expended to achieve the given result? Mr. Ebbott expressed concern that a “hasty application of metrics” will turn legal services into “widget factories” unable to render the type of representation to low-income clients described in this example.

Attachments