


## MEMORANDUM

**To:** Operations and Regulations Committee

**From:** James J. Sandman 

**Date:** July 13, 2011

**Re:** Management Recommendation on Funding Reallocation Issues

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This memorandum provides the recommendations of LSC management on issues relating to the allocation of grant funding following the 2010 census.

**I. Background**

As the Committee has been advised at prior meetings, current appropriations law requires LSC to allocate basic field funding among geographic areas on a "per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within [each] geographic area."<sup>1</sup> The pertinent statutory language is as follows:

Sec. 501. (a) Funds appropriated under this Act to the Legal Services Corporation for basic field programs shall be distributed as follows:

(1) The Corporation shall define geographic areas and make the funds available for each geographic area *on a per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within the geographic area*, except as provided in paragraph (2)(B). Funds for such a geographic area may be distributed by the Corporation to 1 or more persons or entities eligible for funding under section 1006(a)(1)(A) of the Legal Services Corporation Act (42 U.S.C. § 2996e(a)(1)(A)), subject to sections 502 and 504.

(2) Funds for grants from the Corporation, and contracts entered into by the Corporation for basic field programs, shall be allocated so as to provide—

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<sup>1</sup> Pub. L. 104-134, 110 Stat. 1321, H.R. 3019, April 26, 1996, *Omnibus Consolidated Rescissions and Appropriations Act of 1996* (hereinafter *Appropriations Act of 1996*), Sec. 501(a)(1).

(A) except as provided in subparagraph (B), an equal figure *per individual in poverty for all geographic areas, as determined on the basis of the most recent decennial census of population* conducted pursuant to section 141 of title 13, United States Code (or, in the case of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population counts historically used as the basis for such determinations); and

(B) an additional amount for Native American communities that received assistance under the Legal Services Corporation Act for fiscal year 1995, so that the proportion of the funds appropriated to the Legal Services Corporation for basic field programs for fiscal year 1996 that is received by the Native American communities shall be not less than the proportion of such funds appropriated for fiscal year 1995 that was received by the Native American communities.

(Emphasis added.)

Because the 2010 decennial census did not provide information on the number of individuals in poverty, a change in current law is necessary, and other changes may be appropriate. Specifically:

- Data other than the decennial census must be used to determine the number of individuals in poverty.
- Because the decennial census provided new poverty estimates only every ten years, the redistribution of LSC funds among service areas could previously be implemented only on a ten-year cycle. The alternative data sets that are available for identifying the distribution of the poverty population, by contrast, are updated annually. This will allow LSC to redistribute funding more frequently, thus aligning the allocation of basic field grants more closely with the location of the poverty population.
- The changes in the location of the poverty population since the last funding redistribution in FY2003 will result in significant reallocations among service areas. Given the magnitude of these changes, phasing in the new funding distributions may be desirable to enable grantees to adjust to their new funding levels

## **II. Distribution of Funding among Geographic Areas**

### **Recommendation**

We recommend that Section 501(a)(2)(A) be amended as follows:

(A) except as provided in subparagraph (B), an equal figure per individual in poverty for all geographic areas, as determined ~~by the Bureau of the Census on the basis of the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code~~ (or, in the case of the Republic of Palau, the Federated States



of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population countshistorically used as the basis for such determinations); and

## Explanation

We recommend this amendment for the following reasons:

- It effectuates the intent of Congress, as reflected in the existing language, that the determination of the number of individuals in poverty in each geographic area be made solely by the Bureau of the Census.
- It addresses the census issue narrowly, directly, and concisely.
- It incorporates the language of subsection (a)(1) and therefore ensures consistency between subsections (a)(1) and (a)(2). It uses Congress's own, existing language to resolve the census issue.
- It leaves the identification of the appropriate data sets to determine the location of the poverty population to the agency with special skill and expertise in this area (the Bureau of the Census) and does not require LSC to make judgments about that subject.
- It does not tie the determination of the location of the poverty population to any specific data set that could become unavailable in the future, as has happened with the decennial census.

We note that other statutes providing for the allocation of federal funds to serve low-income populations give some discretion to the allocating agency in selecting the data sets to be used to locate the eligible population.<sup>2</sup> In addition, NLADA has recommended that LSC's determination of the number of poor people in each service area be based "on the best available data *identified by LSC* through consultations with the Census Bureau." (Emphasis added.) We think it preferable to leave the matter to the Census Bureau, as was Congress's intent in the current version of Section 501(a).

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<sup>2</sup> Examples of these provisions include the following:

- In allocating funds among local education agencies for the Department of Education (ED) Title I program, the "Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data . . . available from the Department of Commerce." (20 U.S.C. § 6333(c)(2). The data actually used are from the Small Area Income and Poverty Estimates (SAIPE), which the Census Bureau prepares under contract with ED.
- In the allocation of funds among states for the ED's Individuals with Disabilities Education Act (IDEA), ". . . the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary . . ." (20 U.S.C. § 1411(d)(3)(A)(ii)). ED also uses SAIPE data for these purposes.
- The allocation of funding under the Department of Housing and Urban Development (HUD) Community Development Block Grant Program is based in part on "the extent of poverty," defined as the "number of people whose incomes are below the poverty level." The pertinent legislation specifies that "Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget . . ." (42 U.S.C. § 5302(a)(9)). Further, the determination "shall be based . . . on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year." (42 U.S.C. § 5302(b)).
- The determination of the amount of federal matching funds (the "Federal percentage") for the Child Health Insurance Program "shall be promulgated by the Secretary . . . on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce." (42 U.S.C. § 1301j (a)(8)(B)).

It will be helpful to have language in the committee report accompanying new appropriations language specifying what the Census Bureau's duties are and how they are to be implemented. We will confer with the Office of Management and Budget and with the relevant committee staff members on how to accomplish this.

### **III. Frequency of Redistributions**

#### **Recommendation**

We recommend that LSC implement redistributions of funding among geographic areas on a three-year cycle.

#### **Explanation**

Previous redistributions of funding among geographic areas could occur no more frequently than once every ten years, because the redistributions had to be based on the most recent decennial census. The alternative data sets available to the Census Bureau for identifying the location of individuals in poverty, however, are updated annually, allowing the allocation of LSC funding to be more responsive to shifts in the distribution of the poverty population.

The frequency of redistributions must balance several competing concerns. On the one hand, funding distributions should be targeted as closely as possible to the location of the population eligible to be served. This concern weighs in favor of more frequent redistributions. On the other hand, grantees benefit from stability in funding criteria, so that they can plan their operations effectively, make hiring decisions, assess office locations, etc. Reallocations also impose an administrative burden on LSC itself. These concerns weigh in favor of less frequent redistributions.

We believe that annual redistributions would be too frequent and impose unacceptable burdens on both grantees and on LSC. We have considered three-year and five-year redistribution cycles, and we believe that a three-year cycle strikes the appropriate balance among the competing concerns for the following reasons:

- A three-year redistribution cycle will more effectively ensure that LSC funding is responsive to shifts in the location of the poverty population than will a five-year cycle. Aligning funding with the location of the eligible population to be served is a core purpose of the allocation scheme mandated by the appropriations legislation.
- A three-year cycle will allow the use of data that are two years more current than a five-year cycle.
- A three-year redistribution cycle will reduce the size of swings in the location of the poverty population and therefore of each grantee's share of available LSC funding.

NLADA has recommended a five-year redistribution cycle. While we believe that recommendation is reasonable, we think a three-year cycle is preferable.



Implementation of any multi-year redistribution cycle by means of annual appropriations legislation poses some challenges. We will have to work with the Office of Management and Budget and with congressional staff to accomplish this.

#### **IV. Phase-In of the Next Reallocation**

##### **Recommendation**

We recommend that the first redistribution of LSC funding among geographic areas based on new Census Bureau data be implemented over a two-year period. Fifty percent of the reallocation of funding among geographic areas resulting from changes in the distribution of the poverty population since the 2000 census would be implemented in Fiscal Year 2013. The remaining fifty percent of the redistribution would be implemented in Fiscal Year 2014. Future redistributions would not be phased in, but instead would be implemented in a single fiscal year.

##### **Explanation**

The importance of ensuring that the allocation of funding mirrors the actual distribution of the poverty population weighs against any phase-in of the redistribution. Nevertheless, we believe a phase-in is warranted for the following reasons:

- In the absence of a major increase in overall LSC funding, the redistribution will impose large funding losses on a number of programs. For example, data from the 2009 American Community Survey indicate that since the 2000 census, eight states' shares of the nation's poverty population fell by more than 20%, with the losses ranging as high as 30%. For some states, the losses will be even higher when 2010 data are included. These losses could have devastating consequences for some programs, especially given declines in funding from other sources, possible cuts in LSC funding, and the high percentage of grantee funding that comes from LSC in some of these states.
- The redistribution also will result in significant increases for a number of programs. For example, data from the 2009 American Community Survey indicate that since the 2000 census, twelve states' shares of the nation's poverty population increased by more than 15%, and eight states' shares increased by more than 20%, with the increases ranging as high as 29%. Funding increases of such magnitude in a single year could be difficult for programs to implement prudently and effectively. Accordingly, a two-year phase-in could improve grantees' ability manage and deploy LSC funds most efficiently and appropriately.
- NLADA has recommended that LSC implement the reallocation scheduled for FY 2013 over a period of two years.
- A phase-in of future reallocations will not be warranted because, with more frequent redistributions (see above), changes in the distribution of the poverty population and the resulting funding redistributions should not be nearly as significant as the changes that will occur with the 2013 redistribution.

Implementing a two-year phase by means of annual appropriations legislation will require our working with the Office of Management Budget and congressional staff.

## **V. Next Steps**

Once the Committee and the Board approve a proposed approach to dealing with the census issue, we recommend that the proposal be published promptly in the Federal Register with a request for public comment within thirty days. After receiving and considering public comment, the Committee and the Board can then make a final decision. LSC should be in a position to make a final recommendation to the Office of Management and Budget by early September of 2011.