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August 17, 2011

Mark Freedman  
Senior Assistant General Counsel  
Legal Services Corporation  
3333 K St., NW  
Washington, D.C. 20007

RE: Request for Comments  
Poverty Data and LSC Funding Distribution

Dear Mr. Freedman:

Let me offer my thanks to LSC for the solicitation of comments regarding poverty data and funding distribution recently announced in the *Federal Register*, Vo. 76, No. 153.

My purpose in submitting comments is to advocate for “hold harmless” funding for all LSC grantees. Before specifically addressing that issue, however, let me address the recommendations received from the LSC Staff and NLADA. My program and I hold the LSC staff in very high regard. We are a member program of NLADA and hold it in very high regard as well. The LSC Staff and NLADA agree that funding of grantees should be based solely upon poverty population; that poverty should be determined by the Bureau of the Census; that the initial changes in funding should be phased in over two years; and that the frequency of redistributions be every three (LSC Staff) to five (NLADA) years.

If our goal is to *merely* change the technical appropriations language regarding the decennial census (i.e. to address the fact that the decennial census no longer tracks poverty), and to do so in such a manner that we end up with a funding distribution scheme that looks as much like our current scheme as possible, then these recommendations of the LSC Staff and NLADA appear essentially sound (more on this later).

If, however, we have greater ambition.....if we want to seize this opportunity as a means to ensure that our grantees are funded at a level that promotes high quality legal services to the client community and rational planning on the part of grantee Boards and staff, then I think that we can achieve something much better than these recommendations.

**Hold Harmless Proposal:** My proposal is that we take a “snapshot” of the 2011 LSC funding provided to each of LSC’s 136 grantees and that we consider this level of funding for each to be its “base funding level”. If LSC’s appropriation for field programs is frozen for future years, each grantee would continue to be funded at its base funding

level regardless of changes in its poverty population. If LSC's appropriation for field programs is reduced in future years, then the reduction would be implemented in a *pro rata* fashion based upon the 2000 census (upon which our current 2011 funding is based). If LSC's appropriation for field programs is increased, then all grantees would receive at least their base funding level, and those programs with *increased pro rata* poverty population would share in the increase (unless funding of all programs on an equal *per poor person* basis would permit an increase for all grantees).

One may point out that my proposal results in funding that is not "*equal*". It results in programs with reductions in *pro rata* poverty population receiving more than their *pro rata* share of funds compared to programs with increases in poverty population. I understand that this is the case and commend to LSC that it is justified.

Most of us remember quite vividly the planning turmoil that took place at LSC and among its grantees from 1996 through 2000. The result was a dramatic consolidation of legal aid service areas. While settling on 136 grantees may or may not have been the perfect outcome, the result is that this number strikes a reasonable balance between efficiency on the one hand and accessibility to services on the other. Still, with more than a decade of reconfiguration under our belts, and with efficiencies gained through the use of technology, we still manage to address less than 20% of the legal needs of the poor. Less than 20%. Sobering. (See *Documenting the Justice Gap in America*, LSC, 2009).

**The Emergency Room Model:** Imagine that my legal aid program is an emergency room. There is a line of sick and injured people trying to get into the door for treatment. The line is so long, however, that no matter how hard we work, no matter how many efficiencies we employ, we can never see all the way to the end of the line. At our best we have sufficient money to hire enough doctors and nurses to enable us to provide high quality treatment for the first 20% of the sick and injured in the line.....but we never have the resources to serve more.....we never have the doctors and nurses necessary to enable us to serve the entire line of people.

Now imagine that over time the number of people in line to get into our emergency room is reduced by 6%.....or 10%.....or 30%.....pick a number.....and imagine that our funding is going to be reduced by this same percentage. The line of sick and injured is still so long that we cannot see the end of the line.....and no matter how hard we try and no matter how many efficiencies we employ we cannot serve everyone.....but now our funding has been reduced by 6% or 10% or 30%.....so we now no longer have the funds to employ a sufficient number of doctors and nurses to treat those sick and injured than can get in through the door! We may have the money to hire doctors to treat those with the flu, but not the funds to hire a doctor skilled in responding to heart attacks or in setting broken bones.

This is what is going to happen to your grantees.....those with drops of poverty population in the range of 20% to 30% as forecast by the LSC Staff recommendation. We will reduce their funding level by such an extreme amount that they will not be able to provide high quality services to those clients who are able to get in the door.....those clients who are at the front of the line....a line that even though it is reduced in length by 20% – 30% is still so long that one cannot see its end.

Just as all Americans expect *any* emergency room, regardless of size, to be able to provide high quality services in core medical areas, so should we expect the same of legal aid programs. LSC *requires* that its grantees provide a full range of services. If we reduce the funding of an existing grantee by 30% however, even if the reduction is phased in, how can that grantee provide a full range of services when they can only meet 20% of the need now? We must not fool ourselves.....A reduction of 20% - 30% will not mean that a grantee will lose 20% of its housing attorneys, and 20% of its family law attorneys, and 20% of its consumer law attorneys, and 20% of its public benefits attorneys.....it means that it will lose so many of its attorneys that it won't have enough attorneys to cover the basics.....it may have no consumer law attorneys.....or it may be forced to cease providing family law services or housing law services. We'll cripple the ability of grantees to provide high quality services for those clients who do get in the door.

I agree that it is fundamentally unfair to fund one legal aid in an amount that is greater than its *pro rata* share of poverty population warrants. I commend to you, however, that it is even *more unfair* to fund a legal aid at a level so low that we obliterate its ability to provide high quality services to those low-income people who remain. *Mark these words; if we reduce the funding of a grantee by 30% we will make their past ability to serve a mere 20% of their poverty population seem like a glorious achievement worthy of praise and emulation.* We will be decimating the potential of these grantees to fulfill their mission...our mission...we will guarantee shoddy legal services for the clients able to access our services.

**If We Aspire to Fairness:** If we *really* want our grantees to be an integral part of a statewide justice community, as LSC rightly demands of us, then isn't it fair to examine and consider the availability of local resources of all grantees? My program, for instance, is located in Appalachia. Like many rural areas, we've probably experienced a reduction in our *pro rata* poverty population percentage (not a reduction in the raw number of people living in poverty). If LSC were to dramatically reduce our funding we have little local ability to make up for the loss. Legal Services of Northern Virginia, on the other hand (a program for which I have affection and admiration), has experienced an increase in its *pro rata* poverty population, but it also exists in an area with some of the greatest wealth in the nation. Just what kind of fairness do we demand of ourselves and for our clients?

The recommendation of NLADA specifically suggests that we NOT venture into this type of "fairness calculation", stating "Arguments on considering such ancillary issues as the costs of urban/rural delivery, availability of non-LSC funding, or other factors in distributing funds were seen as unduly complicating the question of fair allocation and each contained significant downsides." (NLADA recommendation, Page 2).

I truly understand NLADA's position. Even if we wanted to take into account each of the local factors that impact the ultimate fairness of our allocations how on earth could we ever devise an efficient and manageable system for doing so? I admit that I do not know. This does not mean, however, that we should make *no effort* to engender greater fairness into our resource distribution policies! Adoption of a "hold harmless" funding system in which every grantee is assured of a base funding level (unless overall LSC funding is reduced) is relatively simple to implement and, while not comprehensively fair,

is more fair than strict *pro rata* distribution of resources if maintaining the ability of every grantee to provide high quality services is at least in part our goal.

Hold harmless funding distribution is not only fair (given the unfair circumstances in which we find ourselves); it would also promote fundamentally better planning among grantees. How is a grantee supposed to attract and maintain a highly qualified staff if jobs are not assured for longer than three years? How can a grantee keep its constituent community apprised of its service delivery plan if that plan changes every three years because of reductions in funding? How can we effectively plan when changes in poverty population clear across the nation result in funding reductions in our own regions in spite of raw poverty population numbers that may have even increased?

**Turbulent Times:** These are turbulent times filled with uncertainty and fear. Hold harmless funding would offer a small measure of stability...of predictability...for LSC's grantees. It would help ensure that we maintain the ability to fulfill LSC's goals.

If we follow the easy path.....the one that feels most comfortable because it is most nearly like the one that we have followed for so long.....the one recommended by my friends of the LSC Staff and NLADA.....we are going to leave many thousands of low-income people with access to grantees even less equipped to serve them than in our "meeting 20% of the need" past. We are presented with the opportunity to take action that, even if not bold, at least somewhat reflects the realities of how reductions in funding impact the delivery of core legal services. We are not contemplating the trimming of extra branches here.....we are talking about severing essential roots.

The recommendations of both the LSC Staff and NLADA address the need for the changes in the distribution of resources to be made in a manner that reduces stress on grantees and enables effective planning and implementation of change. This hold harmless proposal would do just that. If my proposal is not adopted in some form or fashion, however, I commend to LSC that redistribution calculations made every five years, with phasing in of changes over a five year period, would best promote planning and implementation of required changes in staffing and service delivery. It would also help if LSC adopted a five-year grant cycle as already permitted by law.

Thank you.....thank you very much.....for considering these comments. May your deliberations advance us toward a more just America.

With best regards,



Larry T. Harley  
Executive Director