

TO: LSC Board of Directors
c/o Rebecca Weir

FROM: Janet LaBella
Director, Office of Program Performance (OPP)

DATE: October 5, 2011

SUBJECT: Comments to Fiscal Oversight Task Force Report and Recommendations

Introduction. These Comments to the Fiscal Oversight Task Force Report to the Board of Directors of the Legal Services Corporation are primarily focused on the findings and recommendations that most directly affect OPP. While they take into consideration the work of OPP and the impact of the Report’s recommendations on OPP, they are not intended to be submitted on behalf of OPP or necessarily reflect the views of the staff of OPP.

Limited purpose of the Task Force. As stated in the Report, the purpose of the Task Force was: “to undertake a review of and make recommendations to the Board regarding LSC’s fiscal oversight responsibilities and how the Corporation is conducting fiscal oversight of its grantees.” (Report, p. 1). The composition of the Task Force was consistent with its fiscal oversight focus.

OPP’s mission is centered on promoting high quality legal services by LSC grantees and effective and efficient delivery systems. While OPP conducts a limited review of the financial administration of LSC grantees as part of the competition process and program quality oversight activities, it does not conduct a full fiscal review nor does it examine fiscal internal controls. That function, as noted in the Report, is executed by the Office of Compliance and Enforcement (OCE) and the Office of the Inspector General (OIG). The Report further notes that “LSC’s processes related to program quality were *outside of the scope of the Task Force’s purview and, as such, are discussed in this report only to the extent needed to provide context for comments regarding LSC’s fiscal oversight functions.*” (Report, p. 1, emphasis added).

This background is essential to provide context to the Task Force’s findings and recommendations. As demonstrated in footnote 20 of the Report, the Report’s recommendations often far surpassed the Task Force’s limited purpose and encompassed how LSC should assess program quality, even though a review of OPP’s activities and program quality oversight were not a focus of the Task Force’s review.

LSC Strategic Planning. It is important to note that the LSC board and management are embarking on a strategic planning process to guide the Corporation for the next five year period. The recommendations in this Report should be viewed in the context of that strategic planning, particularly those that recommend a significant change in organizational structure or focus. Those recommendations should be considered as part of the strategic planning process and implementation should be deferred until that process is completed and a thorough review of the organizational structure of LSC is conducted.

Review of Findings and Recommendations.

I. Organizational Identity and Mission. The Task Force’s recommendation that LSC “clarify and affirm the Corporation’s responsibilities related to fiscal oversight” makes sense. A high level of coordination between grantee program quality oversight activities and compliance and fiscal oversight is essential in order for LSC to effectively and efficiently fulfill its mission to provide funding for and oversight of the provision of civil legal services to low income persons.

II. Communication and Coordination the Board, Management and OIG. The Task Force recommends that LSC build on its progress in strengthening the focus on oversight and compliance and clarify roles of each of the parties (the Board, LSC Management, OIG and the IPA’s) with regard to fiscal oversight roles. While clarification of the roles of each of the interested parties is a worthwhile objective and will likely lead to more efficient fiscal and program quality oversight, some of the individual recommendations go beyond the scope of the Task Force’s charge and focus of review.

Clarification of roles and better collaboration can occur without OPP, OCE (and possibly OIM) being consolidated into one office, referred to by the Task Force as the Office of Grantee Assessment (OGA). (Recommendation II.A.1.) Prior to such a massive restructuring, a full analysis of the goals and objectives of such a re-organization should be undertaken in the context of the ongoing strategic planning process. As noted in the Report, LSC experiences frequent transitions of leadership and management as a new board is appointed with each United States presidential administration. In the past, the functions performed by OPP and OCE were combined and all reports are that the combined office was not effective in executing compliance and fiscal oversight responsibilities. Recently as two separate offices, OCE and OPP have been managed by a Vice President for Programs and Compliance. That position, currently vacant, provides the structure for coordination and collaboration between the distinct functions of those offices.

The restructuring that is proposed is not necessary to accomplish more efficient and effective program oversight and the laudable goals and objectives of the Task Force. A Vice President position should be filled to oversee OPP and OCE (and OIM). While fiscal oversight and experience in internal controls would be an asset for the incumbent of that position, legal aid field experience is equally important and should not be ignored. In addition, while increased fiscal oversight should be effectuated, it should be done in a balanced manner and not at the expense of program quality.

Recommendation II.A.3. speaks to creating multi-disciplinary oversight teams. Currently, OPP is organized into regional teams, with individual program assignments to program counsel, who are responsible for competition reviews, funding recommendations and program quality oversight. Having OCE compliance and fiscal staff either assigned to similar regional teams or assigned as point persons

for individual programs would likely enhance the communication and collaboration between OPP and OCE. The consolidation of OPP and OCE is not necessary for there to be greater cooperation and collaboration between the two offices. OCE and OPP participate in a number of committees such as Intake, PAI and Grant Assurances. Participation by both offices in other committees should be encouraged. Targeted “joint visits” would benefit both grantees and LSC, however, joint visits should not replace separate OCE CSR/CMS and OPP PQVs. They are most effectively employed when there is an issue of interest to both OCE and OPP or where the risk assessment analysis points to both compliance and program quality visits. It would be beneficial for fiscal oversight teams to go on some OPP PQVs when fiscal issues are apparent.

III. Grantee Fiscal Oversight Process. The Task Force recommends that an LSC risk assessment process that includes the OIG and identifies financial risks be implemented. (III.A.1.) In 2008-2009 LSC engaged in developing a risk management assessment that is ripe for review. This review could be part of the strategic planning process. Both OPP and OCE currently employ a risk assessment process to determine which grantees will be visited in the upcoming year. It would be productive to review the factors considered in the risk assessment processes and for the offices to collaborate more fully in the assessment of the factors. It is important to note that many of the factors considered by OPP do not pertain to financial risks, but rather to programmatic risks. A renewed focus on fiscal risks should not be undertaken at the expense of reviewing program quality and provision of effective legal services.

In Recommendation III.A.5. the Task Force calls for consolidation of the “process for tracking recommendations made to grantees and their plans for corrective action.” LSC recently implemented the “Post PQV RFP” through which grantees report on the status of implementing recommendations from Program Quality Visit reports. This process provides a mechanism for timely follow up of such recommendations and is incorporated into LSC Grants. LSC should be careful, however, not to turn follow up of OPP program quality recommendations into required corrective actions. Follow up of OCE Corrective Actions could be accomplished by integrating a supplement to the competition process, similar to the PQV follow up tool.

The Task Force recommends that the scope of fiscal reviews be expanded prior to the award of grants. (III.B.1.) The RFP would benefit from a greater focus on fiscal capacity. Fiscal review at the point of competition would be conducted most efficiently by the fiscal staff, who are trained and have expertise in this field. Fiscal staff should develop additional inquiries and document requests to be incorporated into the RFP that would enable a more robust review. While it may be beneficial to increase the number of capability assessments prior to awarding grants (III.B.3.), such assessments are currently performed in multi-applicant competitions, for new applicants and when a sole current grantee/applicant has significant performance issues. This capability assessment process would be enhanced by expanding the

scope of the assessments to include a focus on fiscal capacity and internal controls. Trained fiscal staff should take the lead in fiscal capacity assessments.

In Recommendation III.B.5., the Task Force calls for greater flexibility in visit planning and budgeting. Currently the duration and team composition and size for on-site visits conducted by OPP vary depending on the size and the complexity of the grantee visited and the risk assessment scope. Even more flexibility in visit preparation and planning, including flexibility in budgeting, would further enhance on-site assessments and oversight.

Increasing the use of data analytics would improve not only oversight, but also knowledge of the grantees' work and overall management. (Recommendation III.B.6.) LSC is currently engaged in a review of its grantee data analysis. A greater emphasis on systematic comparisons of data would improve both the risk assessment process and program oversight. In order for this recommendation to be effectively implemented, training in the use of statistics and analytics needs to be provided.

IV. Knowledge, Skills and Experience. Recommendation IV is heavily focused on training for fiscal oversight roles. Identification of and provision for trainings for staff development is currently an organizational goal. While some cross training would enhance collaboration and productivity, it would not be productive to attempt to train all professional staff to acquire the same or similar skills. Maintaining separate functions that recognize the multi-faceted aspects of effective grantee oversight—fiscal, compliance and program quality—would be most efficient. Each aspect of program oversight requires different and specialized skill sets. This should be recognized while promoting increased collaboration and cross training between the offices.

Communication of expectations and responsibilities to grantees should be enhanced. (IV.C.1.) However, this should not be limited to fiscal best practices but be inclusive of best practices that affect quality, effectiveness and efficiencies of legal work as well.