

Comments on Report of the Fiscal Oversight Task Force
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Summary

There are several good ideas in the Fiscal Oversight Task Force Report (hereafter (FOTF Report). It does not, however, either fully discuss and analyze or deal effectively with the major problems as to how LSC resources that should be available for fiscal and other oversight are actually used, because it does not effectively address the role of the Office of Inspector General (OIG) which has the lead role in fiscal oversight and about half of all the staff resources currently tasked for these functions. Instead, its most significant action recommendation is for a reorganization of all LSC Management and Grants oversight (MGO) offices interacting with LSC grantee programs. As analyzed below, this proposal actually dilutes the effectiveness of fiscal and other compliance oversight and does not give due weight to the other aspects of LSC interaction with grantee programs.

Major Issues Not Effectively Addressed

The most significant problem with LSC fiscal oversight is with OIG, because OIG has over 25 staff, the responsibility for overseeing the Independent Public Accountant (IPA) annual audit of grantees, and has a large amount of unused funding (50% carryover) that could be used for a robust program of fiscal visits. The major problem in making full and effective use of all LSC resources for fiscal oversight is that OIG resources, OIG information, etc. are not available to LSC.

It is critical to effective fiscal oversight (and other compliance oversight) that the OIG contribute fully to oversight and work as part of LSC. The clear statement that the LSC Board does have, and should exercise, “general supervision” over the OIG, consistent with the statutory requirements for OIG independence, is one of the high points of the FOTF Report. The critical point made is that the Board should actually exercise this general supervisory authority as more than a formality. In my opinion, it should be exercised so as to promote more effective use of all LSC resources, including the OIG, for fiscal oversight.

Office of Compliance and Enforcement (OCE) and OIG together have the resources to do a very much better job of fiscal oversight than is now being done. However, once the FOTF states that the Board has this general oversight authority over OIG, the actual use of this authority to mobilize OIG resources for more thorough and extensive compliance oversight is not an area focused on in the FOTF Report.

The FOTF also did not even mention another major problem -- that the Independent Public Accountants (IPA’s) are also tasked with regulatory compliance review which is not their expertise. Not only do they do this job poorly and at significant expense to the grantees, but also, it distracts them from their core job of fiscal oversight. A truly effective reform plan would begin with an effort to change the current system so

the IPA's concentrate on the actual grantee accounts. This is something that the Board could initiate under its general supervisory powers. Granted, it would take some legislative changes, but if those changes are presented as initiatives toward doing a better job of fiscal oversight, there would be a very good chance of their going through.

Furthermore, rather than doing occasional after the fact Audit Service Reviews, all audits should be reviewed rapidly when received (the OIG has the staff for this) and returned to the auditor for more work if they are not thorough and well-done. This is not a theory – the Audit Division of LSC Management used to carry out exactly this process before the function of supervising the IPA's was turned over to OIG in the mid 1990's.

Given the relative ineffectiveness of the IPA's and the fact that the IPA's work for the grantees, and not for LSC, we need "boots on the ground" to strengthen fiscal oversight and other compliance. OCE currently has 23 staff and 3 vacancies. OIG has over 25 staff. If there were a coordinated effort to have OIG and OCE do more frequent on-site fiscal reviews of grantees, this could be accomplished under the general supervisory authority of the Board without in any way infringing on the independence of OIG to go where they want and investigate anything they see fit. There is nothing like the knowledge that someone is coming to take a thorough look at your operations to deter not only theft, but also dubious practices and sloppiness which are much more common.

Structural and Conceptual Weaknesses of the FOTF Report's Reorganization Plan

The FOTF report includes a reorganization proposal that would combine all the elements of LSC that deal directly with grantees into one Office. This plan has been tried before in the mid-1990's, with very poor results, especially for compliance-oriented grantee oversight. In detail, these are some of the weaknesses of the proposed reorganization:

The FOTF sees everything through the lens of fiscal oversight¹, but that is not the only compliance issue. Their recommendations are designed from this one perspective but in effect change all oversight of and relations with LSC grantees. This leaves a large gap in terms of strengthening legal and regulatory oversight.

The FOTF proposes a reorganization to combine OCE, Office of Program Performance (OPP) and Office of Information Management (OIM) into one new Office of Grantee Assessment (OGA). The proposed OGA combines four functions in two groups: Group 1 is grant-making and normal administration and Office of Program Performance (OPP) functions of development of programmatic ideas, best practices etc.;

¹ The FOTF does use a broad definition of fiscal oversight to include use of funds in compliance with regulatory and statutory requirements, but it still does not give due weight to the non-fiscal aspects of compliance. Non-compliance that is not essentially fiscal (engaging in restricted activities) can be at least as damaging to LSC as fiscal problems – e.g., the recent cartoon published by a grantee on its website attacking the Bush Administration. While there was an expenditure of funds, it was minor and was not the problem with this activity. The real problem was that it was political activity of a partisan nature that had no place in the LSC program and that seriously undermined our ability to obtain the funding to support legal service to poor people.

Group 2 is fiscal and regulatory/legal oversight. These two groups are not a good match within one Office. There is an unavoidable, historic tension between these functions. This does not mean LSC shouldn't develop some overlapping groups or Task Forces, because there is a lot to do together, but each group needs its own advocate.

In addition to the structural problems of this reorganization, it has the specific effect of eliminating a separate OCE. LSC needs a strong OCE leader who will push these compliance issues. As the FOTF has said, LSC MGO has responsibility in the fiscal oversight area separate from OIG – and the same is true for non-fiscal compliance. Without the institutional concentration of a separate Office with a strong Director focused only on compliance, the compliance job is not going to be done with the necessary vigor.

Similarly LSC also needs an office for grants administration and for the development of new and innovative service delivery approaches. This is currently OPP. OPP also serves as the main communication link with grantees.

Furthermore, if the OPP and OCE are combined, the head of this new OGA needs to be the main communication link with grantees. While the FOTF is right that this leader should have fiscal oversight background, such a person does need a strong background in actual civil legal service delivery and a strong relationship with the grantee community (not a blind advocate of everything grantee groups want, but still strong presence and credibility in this community). But such a person is likely to be a poor choice for fiscal and especially regulatory oversight which needs different background and some distance from the grantee world-view to do that job strongly and effectively.

OIM does not fit into the proposed structure at all. OIM's primary purposes are collection and analysis of data. These OIM activities not only serve OPP and OCE, but also Government Relations and Public Affairs (GRPA), and the Executive Office. This data collection and analysis function is best performed with some separation from both the compliance and the programmatic issues that may arise between LSC and our grantee programs.

The “Lifecycle” Misconception

There is a misconception in the grant lifecycle discussion in the FOTF Report. While there is competition for LSC grants, which does give LSC an opportunity to push for performance improvement, most LSC grantees have been funded for quite a few years and will likely be funded for quite a few more. Active, viable competitors for Service Areas are rare – most Service Areas have only one viable competitor in the (usually 3-year) competition cycle.

Accordingly, we have an ongoing grants administration issue as to fiscal oversight, not a “lifecycle” issue. The competitive grant process does provide an opportunity to take a more thorough look at a grantee's fiscal competence and the adequacy of its internal controls, but this is a difference in degree, not in kind. LSC can

do fiscal oversight at any time and LSC can impose Special Conditions of a fiscal nature on a grantee just as easily in renewal years as in competition years.

Thus, this new “lifecycle” concept is one that does not match up with the realities of the current LSC programs or with any likely future structure of LSC programs.

Useful items in the FOTF Report

There are several good points in this report: The recognition of the Board’s supervisory role over OIG is good. The concept that fiscal oversight and capability should be taken into account at all stages of the grant process is good – but it doesn’t require a reorganization to do this. And regulatory compliance issues should be equally emphasized in a reevaluation of LSC’s oversight activities.

It is a good and valuable point that fiscal oversight background should be given more emphasis in selection of staff who will have oversight duties. LSC MGO not only does not have enough auditors and accountants, but also we do not have enough staff who have the background to be actively conscious of fiscal management issues and to spot indications of likely problems.

The proposal for internal fiscal accountability training for current and future LSC staff who are involved in grantee oversight (including straightforward grants administration) is an excellent one. It would not be difficult to implement. While I believe OCE should take the lead within LSC MGO on this, other staff should know enough to spot possible fiscal problems and, at least, inform OCE of any possible indications of such problems. Without being accountants, such LSC staff should also be able to take precautions to mitigate any danger to LSC funds, pending OCE investigation.

Another good point is that coordination focused on fiscal (and in my view, other compliance) can and should be enhanced. A lot has already been done, but more can be done. In addition to regular coordination and the involvement of OCE at all stages of the evaluation of the grants process, one of more interoffice Task Forces could be formed to address shortcomings in the focus on fiscal oversight.