

United States Senate

Washington, D.C.

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Grassley, Domenici scrutinize Legal Services Corporation spending, management

WASHINGTON — Senators Chuck Grassley and Pete Domenici are asking the Legal Services Corporation to account for its spending practices and management of resources as the legal aid corporation faces a possible budget shortfall.

Federal tax dollars provide about 99 percent of the Corporation's resources. A December 2007 report by the Government Accountability Office documented spending by the Legal Services Corporation on interest-free loans for employees of Corporation grantees, late-fee payments on overdue accounts, questionable contracts for computer services and lobbyist registration fees. The Office of the Inspector General also determined that the Corporation spent tax dollars on \$14 cookies, limousine rides, premium travel and expensive hotels for board meetings.

“Bad management and abusive spending is jeopardizing the ability of the Legal Services Corporation to provide legal assistance to people in need,” Grassley said. “Congress needs to hold the Corporation and its board of directors accountable on behalf of taxpayers, who provide most of the money to run the Legal Services Corporation, and for the fundamental right in our society to legal representation.”

“The LSC has an important mission and a responsibility to use its resources wisely. I've done my best to be a champion for the LSC and its work, but I'm very troubled by its current problems,” Domenici said.

The text of the senators' letter is below.

July 29, 2008

Frank B. Strickland
Chairman of the Board
Legal Services Corporation
3333 K Street, NW
Washington, DC 20007

Dear Mr. Strickland:

As Ranking Member of the United States Senate Committee on Finance, I thank you for the March 21, 2008 letter (Response) to the Committees on Finance and Health, Education, Labor, and Pensions (HELP) letter dated March 1, 2008. In that letter, Senator Enzi and I

requested that you provide a complete and detailed description of initiatives undertaken by Legal Services Corporation (LSC/Corporation) to address the Government Accountability Office (GAO) findings and recommendations from December 2007 (GAO Report).[1] Additionally, we requested a complete list of on-site reviews and reports of those evaluations conducted by the Office of Program Performance (OPP) and the Office of Compliance and Enforcement (OCE). This request covered reviews and reports from January 1, 2006 through February 1, 2008.

During our time in the Senate, Senator Domenici and I have supported efforts and funding to ensure that eligible clients have access to the highest quality legal assistance and representation available. At the same time, as Members of Congress we owe it to every American taxpayer to make sure that limited fiscal resources are spent in the most effective way and in accordance with applicable law. This interest is especially heightened when you have an entity such as LSC, which is not a government entity but receives the vast majority of its funding from federal appropriations - over \$300 million annually.

Congress appropriates money to LSC to carry out its dual mission: promoting equal access to justice and to providing high-quality civil legal assistance to low-income Americans. Consequently, the LSC Board of Directors (BOD) and management is accountable to the eligible individuals, taxpayers, and Congress for ensuring that these funds are used appropriately and in compliance with applicable law.

In particular, we would like to discuss seven issues regarding the management and oversight of LSC. Specifically, we would like to have the LSC BOD and management:

- address the potential budget shortfall;
- respond to questions regarding grants management;
- discuss LSC's reports on grantee performance;
- explain its governance procedures;
- follow up on the Government Accountability Office Reports;
- respond to open inquiries on LSC's oversight of its independent auditors; and
- provide an update on the LSC President's performance evaluation.

I. POTENTIAL BUDGET SHORTFALL

Information has come to our attention that LSC anticipates a budget deficit of approximately \$1.4 million for fiscal year (FY) 2009 for the Management and Administration (M&A) line item. The M&A budget is approximately four percent of LSC's total budget. The budget category under M&A includes compensation, consulting, travel, rent, and other operating expenses. In a July 1, 2008 e-mail to the M&A Staff, LSC President Helaine M. Barnett wrote, "We have asked office directors to review their operations and identify any savings that we might be able to achieve before September 30, 2008... We have also asked office directors to identify any ways in which we might reduce next year's expenses..." (emphasis added) This is disturbing because based upon a review of the Finance Committee meeting minutes the BOD was assured that there were sufficient management and administration funds and then three months later LSC's President noted that there was a potential shortfall for FY 2009. Although it is unreasonable to expect the BOD to be aware of the assumptions management makes in

developing its operating budget, we are confident that you understand our concern. Accordingly, please explain:

- 1) What event(s) led management to change its fiscal position between April 2008 and July 2008. Why is Ms. Barnett anticipating a potential M&A budget shortfall for FY 2009? Shouldn't Ms. Barnett hold FY 2009 spending level at a level consistent with past years? The FY 2009 M&A budget request presented to Congress was \$17 million, \$4.5 million more than the FY 2008 appropriation. Does the \$17 million request contain inflated line items that are not necessary or needed?
- 2) For the \$814,000 compensation and benefit budget line, please detail how much of the funding is budgeted for salaries, bonuses, and fringe benefits for the president, the chief administrative officer, the vice president of programs, and two executive assistants.

Conferences

In these lean financial times, it is troubling to learn that thousands of taxpayers dollars were/are spent on hosting and/or attending numerous conferences with LSC funding. We recognize that some of these conferences are good opportunities to exchange ideas and knowledge. However, for every dollar spent on non-mission critical activities, there is less funding to support direct assistance and oversight of LSC programs. Below are a few examples to illustrate our concerns:

Foreign Conferences

In June 2008, Ms. Barnett attended the Legal Services Research Centre (LSRC) Conference in London, England. In addition, since 1994 LSC has participated in International Legal Aid Group (ILAG) Conferences that are held all over the world. It is our understanding that Ms. Barnett paid her own expenses to the LSRC Conference because she combined the conference with a previously planned family vacation. However, we do not precisely know what the term "pay her own expenses" means. Did Ms. Barnett voluntarily elect not to be reimbursed for any travel costs, such as airfare, lodging, meals, or per diem costs? In light of this, please provide us the following information for the period of January 1, 2004 to present for all costs incurred by LSC headquarters staff for foreign travel:

- a) The name of the traveler and the purpose of the foreign travel, and
- b) The itemized amount spent on each foreign trip, including transportation, lodging, meals, and per diem costs.

The next ILAG conference will occur in 2009. With a potential budget shortfall on the horizon for FY 2009, will LSC continue to participate in the conference? If so, what is budgeted for the FY 2009 ILAG conference, and how many LSC staff members will attend?

Domestic Conferences

While LSC held its 2004 Executive Director Conference in conjunction with the National Legal Aid and Defender Association (NLADA) Annual Conference, LSC elected not to do the same in 2008. In May 2008, NLADA held its five-day Annual Conference in Minneapolis, Minnesota. It is our understanding that most of the program executive directors attended this conference. In June 2008, just one month later, LSC hosted a three-day Executive Director Conference in Arlington, Virginia. LSC executive directors generally are members of NLADA, so many attended both conferences, incurring thousands of dollars in conference-related costs that could have been better used to support LSC programs. In addition, the Honorable John T. Broderick was a guest speaker at both the LSC and NLADA conferences. When the same attendees hear the same speaker give a similar speech during two conferences just a month apart, what value is this providing to the taxpayers and eligible individuals?

Following the May 22, 2008 Judiciary Committee hearing entitled, "Closing the Justice Gap," a number of questions were posed regarding the cost of the 2008 Executive Director Conference. In response, LSC told the Congress that the total cost incurred for the conference was \$96,000. However, the itemized expenditures did not reveal how much was spent on lodging, meals, individual speaker fees and travel costs for speakers, if any. Accordingly, please provide us with the total cost for each conference/event sponsored by LSC from January 1, 2004 to present and please include the following categories of expenditures: transportation, lodging, meals, speaker fees, speaker travel fees, room rental fees, audio/visual rental fees, materials, and other miscellaneous items.

President's Discretionary Fund

On April 26, 2008, the BOD adopted and approved a \$25,000 grant from the Greater Miami Jewish Federation to LSC's overall budget and allocated it into the LSC Executive Office budget restricted for Ms. Barnett's discretionary use. As we understand it, this gift to LSC was made by friends of Ms. Barnett. At a time when eliminating the justice gap is a priority, all funding, whether they are federal appropriations or private grants, should be spent to promote providing equal access to civil legal assistance. Please explain the definition of "discretionary use of the LSC President" as set forth in the grant documents. As reported in the past, Ms. Barnett inappropriately spent LSC funding on premium-class travel, private limo services, and working meals. Does "discretionary use of the LSC President" permit Ms. Barnett to use this grant for these types of expenditures? Has the BOD developed a reporting mechanism for Ms. Barnett to account for her expenditures from this grant and any future grants of this kind? If so, please detail that reporting system.

II. OVERSIGHT OF GRANTS MANAGEMENT

In carrying out its mission, LSC uses the majority of its annual federal funding to provide grants to grantees which assist eligible clients in resolving their civil legal problems. LSC monitors 137 grantees through compliance and programmatic site visits and reviews conducted by the OPP and OCE. OPP, as we understand it, is responsible for program evaluation and design, and administration of the competitive grant process. The OCE on the other hand is responsible for overseeing grantee compliance with various federal laws and regulations. The site visits and reviews are designed to ensure grantee compliance with applicable law, improve

operational efficiency, and enhance service to eligible clients.

However, we are troubled by what appear to be instances where OPP and OCE presented grantees conflicting conclusions. In other words, two separate divisions of LSC, that both report to Karen Sarjeant, may have different findings about the same grantee. In addition, please explain why the prior BOD and LSC President decided that having two separate and distinct divisions with separate supervisors was necessary.

Furthermore, and based upon our review of all the materials provided, not all site visits received the necessary follow-up reviews. Such a practice appears to provide little or no value to the necessary oversight functions charged to LSC headquarters. A few examples from the reports provided by Ms. Barnett illustrate our concern:

Inadequate Follow-up

1) An OPP staff member wrote in a Personnel EV Summary report after visiting the Arizona DNA - People's Legal Services (Arizona DNA) in February 2007 that the program's "...major problem is weak fiscal procedures and tracking. The director noted that the organization is paying thousands of dollars per year in penalties because bills are not paid on time." (emphasis added) The staff wrote further, "I discussed this issue at length with the director, who said that his financial staff are behind the times and work with antiquated systems rather than learn new methods." Instead of obtaining documentation to assess the extent and nature of the problem, the staff wrote, "While I do not believe these penalties have been paid out of LSC funds, I explained that the payments of late fees denotes serious problems with fiscal management that should be dealt with."

2) A joint OPP and OCE on-site investigation was conducted in March 2007 for the U'una'I Legal Service Corporation (ULSC) in American Samoa. LSC first funded ULSC in 2004. However, funding for 2007 was awarded to ULSC only through March 15, 2007 because LSC was concerned about the ULSC's fiscal management. Three LSC staff members were sent to American Samoa to assess ULSC. In a May 2007 memo to Ms. Sarjeant, a staff member wrote the following: "The lack of program staff with fiscal training has caused ULSC considerable difficulty in fiscal management. It has a history of late filing of payroll taxes and evinces deficiencies in internal controls and procedures." (emphasis added) The staff wrote further that the program probably paid the IRS twice, might not be liable for all of the IRS penalties, and might have been overcharged by the Certified Public Accountant for its 2004 audit." The staff member concluded that, "Although the fiscal consultant's findings identify significant deficits in sophistication and procedure, none of the findings suggest malfeasance on the part of the U'una'I staff." As a result of this conclusion, the LSC staff member recommended that ULSC be funded on a month-to-month basis as an interim provider.

Inferences used in the examples set forth above are simply unacceptable. First, we are concerned that the inferences lack any analytical evaluation of the supporting evidence. Second, there is no adequate assurance that federal taxpayer funds were not used to pay avoidable late payments, penalties, and excessive accounting fees. The Arizona DNA Program Engagement Visit (PEVs) Summary and ULSC memo also provide no indication that LSC management,

including Ms. Sargent, resolved the issues identified.

III. ANALYSIS OF LSC REPORTS

Staff also conducted a careful analysis of all the reports produced by OPP and OCE site visits from January 1, 2006 through February 1, 2008. As part of the analytical review, the information was cross-referenced with the information obtained by GAO during their audit of LSC. As a result, it was noted that there were 23 PEVs completed in 2006. According to Ms. Barnett's Response, PEVs "...do not result in a written report to the program." However on May 27, 2008, GAO advised staff that they were informed by LSC during the audit that PEV Summary reports were provided to grantees. Can you please explain this inconsistency? In other words, do PEVs result in a report or not?

As we continued to cross-reference information with the GAO, other inconsistencies were identified between what was represented to the Committees and what was represented and provided to the GAO. More specifically, the comparison revealed that LSC provided three reports to the GAO not included in the Response to the Committees. Conversely, eight reports listed in the Response were not provided to the GAO during its audit.

These discrepancies undermine Congress's confidence in the information provided by LSC. Therefore, we request that LSC conduct another review of its records and respond with a complete and up to date list of all site visits conducted by OPP and OCE from January 1, 2006 through February 1, 2008. For each site visit, please include the following information:

- a) Name of the State;
- b) Name and number of the grantee;
- c) Type of review conducted and the name of the office conducting the review;
- d) Date of the site visit and/or re-visit;
- e) A copy of the final report issued including the date that it was provided to the grantee and the date that comments were received by the LSC from the grantee;
- f) If no final report was issued after a site visit, please explain why and provide a copy of the documents prepared and not provided;
- g) A copy of grantee's response to the draft report provided;
- h) Total cost of the on-site visit, including the allocation of staff salary, consultant fees and travel;
- i) A copy of the each report not included in the Response Letter; and
- j) The current status of all recommendations/findings made by LSC to its grantees.

In addition it was reported that a recent visit to the legal aid program in New York City (NYC) may have incurred costs in excess of \$60,000. If this is the case please provide a break-down of all costs incurred noting specifically the name and positions of all consultants used on the NYC on-site visit.

IV. GOVERNANCE PROCEDURES

We have grave concerns that LSC's internal controls over grant management and

oversight of grantees are inadequate. As reported by GAO, LSC site reviews did not always identify the systemic problems potentially plaguing a grantee. In yet another example, we noted that the GAO found that the NLS executive director lived in Reno and commuted to Las Vegas regularly. In a 10-month period during 2005, GAO questioned commuting costs between Reno and Las Vegas for flights, hotels, meals, parking, car rentals and gas purchases. However, this issue was never identified by LSC in its previous on-site reviews. We understand further that subsequent to the GAO's limited review of the NLS program, still other serious matters came to LSC's attention. Accordingly, we would appreciate being advised of those findings and we would appreciate an explanation as to why LSC failed to identify these problems prior to the GAO reviews.

To assist us in more fully understanding the steps LSC is taking to strengthen its ability to monitor and adequately assure eligible individuals, taxpayers and the Congress that grant funds are used as intended and in compliance with all applicable law, we would appreciate your response to each of the following questions:

- 1) Describe the specific roles that LSC BOD and management have taken or will take to develop and implement a matrix for measuring performance of those LSC offices responsible for compliance and programmatic oversight and investigations. Specifically, what steps will be taken to ensure fiscal and compliance issues will be identified, followed up, reported to, and resolved in a timely manner with grantees?
- 2) Based on the current or planned resource level, what is the expected cycle time that a grantee will receive at least one compliance and programmatic oversight review?
- 3) Provide a list of program reviews completed by OPP and OCE from 2001 to 2007, and a list of all completed and planned reviews for the period of August 1, 2008 through December 31, 2008.
- 4) Describe the standards and methodologies LSC units adhere to for examining, evaluating, verifying, and obtaining evidence to support conclusions reached during compliance and programmatic oversight reviews.

V. FOLLOW-UP ON GAO REPORTS

Additionally, GAO identified internal control weaknesses at 9 of the 14 grantees it visited that LSC could and should have identified with a more effective and systematic oversight review program. On March 1, 2008 the Finance and HELP Committees asked for a detailed response describing the actions LSC has or will take to address the questionable expenditures noted by GAO, such as grantee use of funds for expenditures with insufficient supporting documentation, unusual contractor arrangements, alcohol purchases, employee interest-free loans, lobbying, late fees and earnest money. Unfortunately, Ms. Barnett's Response ignored the substantive details requested. Therefore, please respond to each of the following:

- 1) For the eight grantees [2] LSC referred to the OIG for follow-up, please describe in detail the grantees' actions to address each of the improper or potentially improper use of grant funds

identified in the GAO report.

2) For the ninth grantee, NLS, [3] LSC indicated that OCE is near completion its follow-up investigation of the grantee. Please indicate when LSC placed this grantee on a month-to-month funding status and describe in detail any special conditions placed on the grantee.

VI. OVERSIGHT OF GRANTEE INDEPENDENT PUBLIC ACCOUNTANTS (IPA)

In January 2008, the Finance Committee asked the LSC independent public accountants (IPA), WithumSmith+Brown, P.C. (LSC IPA), whether LSC has the oversight in place to identify material deficiency(ies) that a grantee IPA may have missed, such as the \$280,000 earnest money reported in the GAO report for the NLS. The LSC IPA responded no, "...based on the type of oversight you currently have in place, you wouldn't have...you'll have to have an oversight function that goes beyond where you are now."

The 1996 LSC Act clarified that grantees are responsible for contracting for audits with IPA. Under the Act, IPAs follow the OIG guidance and generally accepted government auditing standards in conducting their audits. These audits include an independent auditor's opinion about whether financial statements are fairly presented in accordance with generally accepted accounting principals along with auditors' reports on internal control and compliance. LSC is responsible for resolving deficiencies and noncompliance identified in the audits.

In the June 2008 Executive Directors Conference, Ms. Sarjeant told the attendees that she will work with the OIG to determine if grantee IPAs should look at additional activities in internal controls within the programs. Please explain the gaps, if any, in the grantee IPAs' audit programs that prevented them from reporting internal control weaknesses that GAO found at the nine grantees. What actions does LSC plan to take to strengthen the work of the grantee IPAs so reports on internal control and compliance can be reasonably relied upon?

VII. LSC PRESIDENT PERFORMANCE EVALUATION

Lastly, as President of LSC, Ms. Barnett is accountable and responsible for the management and operation of LSC. It is our understanding that Ms. Barnett is due a performance evaluation. In light of this fact will the BOD take into consideration the deficiencies and failures identified by the GAO, the OIG and the Congress regarding the operation and management of the Corporation in evaluating Ms. Barnett? In addition, we would like to be advised as to whether or not the BOD will execute a new contract with Ms. Barnett prior to its execution.

In cooperating with our review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to us.

Thank you again for your continued cooperation and we would appreciate receiving your responses by no later than August 12, 2008.

Sincerely,

Charles E. Grassley
United States Senator

Pete V. Domenici
United States Senator

cc: Legal Services Corporation Board Members

Jeffrey E. Schanz, Inspector General
Legal Services Corporation