

LEGAL SERVICES OF SOUTH CENTRAL MICHIGAN

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Mark Freedman
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Legal Services Corporation
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Re: Request for Comments on Poverty Data and LSC Funding Distribution

Mr. Freedman:

I am writing to comment on the Legal Services Corporation's (LSC) Poverty Data and Funding Distribution recommendations published for comment on August 3, 2011. Since these recommendations originated with James Sandman's July 13 memo to the LSC Board's Operations and Regulations Committee, I will also refer to that memo.

I am the Executive Director of Legal Services of South Central Michigan (LSSCM) an LSC grantee serving thirteen counties in southern and central Michigan. LSSCM also administers Michigan's statewide LSC migrant grant through its Farmworker Legal Services division. I have been in my current position since 1983. In the past, I have served as Chair of the Project Advisory Group's (PAG) Funding Criteria Committee (FCC) and as Chair of the National Legal Aid and Defender Association's (NLADA) Civil Policy Group. I am a current member of NLADA's Resources Committee and participated in that group's census workgroup.

As a member of the NLADA workgroup, I felt there was excellent dialog between LSC staff (Bristow Hardin) and the workgroup. I felt that the group was able to identify issues of mutual concern and to come to agreement on many issues. I want to compliment LSC for its participation in that process.

I am writing to express my agreement with two of the three LSC recommendations and my disagreement with the remaining recommendation.

1. Phase in of the next reallocation. I agree with the LSC recommendation that would phase in the next reallocation in the years 2013 and 2014.

I recognize that the period for phasing in population changes has been a controversial topic within the legal services community since the early 1990's. LSC and NLADA have struggled to balance the need to provide funding where the poverty population lives (arguing for immediate implementation) against the devastating effects of huge funding cuts to vulnerable programs. In the 1990's, Michigan was scheduled for population-based funding increases that never quite materialized; in the 2000's Michigan was subject to population-based funding losses

"... there can be no equal justice where the kind of trial... (one) enjoys depends on the amount of money (one) has."

--Hon. Hugo Black, *Griffin v Illinois*, 351 US 12

(1056)



that were phased in over several years. In the current cycle, it appears that Michigan will again gain funding. So I support this recommendation even though it is against the pure economic interest of LSSCM.

Because there has been no population adjustment for ten years, many programs will be facing population changes of 20% or more in 2013. It is better for all programs to have some time to absorb these significant changes.

I support the two year phase in because it provides some additional time for programs that will experience funding losses to adjust their budgets and staffing to reflect the new poverty population level. While it is much easier for programs to adjust to a large funding increase, from a budget planning and program management point of view, two years of steady increases are of considerable value to programs.

It is worth noting that this phase-in won't be necessary in the future if LSC goes to a three year redistribution cycle, because there will not be as significant changes in populations within a three year period.

2. Frequency of redistributions. I agree with the LSC recommendation that would implement poverty population adjustments (“redistributions”) on a three year cycle.

As a long time LSC manager, I see two main goals in the LSC poverty count—timely data and funding stability—and I understand the tension between these two goals. Acknowledging that this is, to some extent, a judgment call—where is the right balance between the stability needed for budget planning and the utilization of current poverty data?—I agree with the recommendation for a three year cycle.

3. Distribution among Geographic Areas.

a. LSC should retain the discretion to select the most appropriate poverty population data source. The NLADA has recommended that LSC be given discretion to determine poverty populations by service area based on the “best available data” from the Census Bureau. I support that recommendation for several reasons.

First, as noted in James Sandman’s memo, this is the majority model within the federal government. Other federal agencies usually make their own population and allocation decisions—based on data provided by the Census Bureau.

Second, the LSC Board has a special understanding of the needs of its grantee programs and low income clients—it is important that the LSC Board retain the discretion to apply its special knowledge and expertise to Census Bureau data. I believe that making an effort to determine the demographics of low income persons and to make funding distribution decisions to address these needs is a responsibility of the LSC Board. I do not think LSC should abdicate that responsibility.

Third, I disagree with the rationale provided for this decision in Mr. Sandman’s July 13 memo – “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 may be true that in 1996 the 104th Congress intended to hamstring the LSC board by significantly reducing its discretion in managing funding for LSC grantees. However: (a) the better policy is to delegate to the agency charged with administering a federal program some discretion in applying its special knowledge and expertise to the

management of that program; (b) regardless of the relationship between the 104th Congress and the former LSC board, I am hopeful that the current Congress would see the current LSC board as a constructive partner in managing the program. I think that the new approach to poverty population counts by the Census Bureau presents an opportunity for a positive change to the allocation process. I urge LSC to support a process based on better governmental policies and current realities.

Fourth, this is a time of great change within the Census Bureau. I am concerned that at some point in the future the Census Bureau may lack the resources or the interest to perform this task in a way that meets LSC's needs. If at any time on the future the Census Bureau were to decline to develop a complete set of LSC data or to choose a data source that seemed inappropriate to the LSC Board and/or the field, LSC would have no recourse.

I acknowledge that the current census language (carried forward intact from 1996) has not been a problem—that is because the legislation chose a single identifiable Census Bureau data source. However, the LSC proposal is not maintaining the status quo—it is setting the Census Bureau off in a new direction and making that agency responsible for one of the most critical policy decisions facing the LSC board.

The current poverty count does not come from a single data source—it comes from the Census data specified in the statute plus modifications to that data developed over time by the LSC board (“...the adjusted population counts historically used...”). There is no single data source within the Census Bureau that will fully address LSC's current data needs. LSC should either choose a specific data source to insert in the statute at this time or retain discretion to make that choice at a later time.

b. In the alternative, LSC should make it clear that it retains some discretion to make policy decisions regarding funding distribution formulae.

Assuming that LSC decides to delegate the responsibility to make decisions about the size and location of poverty populations to the Census Bureau, I would still urge LSC to clarify its authority to make policy decisions relating to funding distribution. The line between “numbers” and “funding policy” is not clear—either in the current appropriations language or in the LSC proposal. I believe that the historical practice of LSC is to obtain **numbers** from the Census Bureau but to make certain **policy decisions** that in some cases modify the Census Bureau numbers. I urge LSC to clarify its communications on this issue to confirm its intent to retain at least its current level of discretion in applying its policy expertise to the data provided by the Census Bureau.

Thank you for the opportunity to comment on this matter. If you would like additional information on any of the points in this letter, please contact me.

Respectfully submitted,



Robert F. Gillett
Executive Director

Cc: Delphia T. Simpson