

## MEMORANDUM

To: Operations and Regulations Committee

From: James J. Sandman, President 

Date: September 14, 2011

Re: Public Comments and Management's Recommendation for Statutory Proposals  
Regarding Poverty Data and LSC Funding Distribution

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### Introduction

LSC management has received and reviewed nineteen public comments on management's July 2011 proposal to recommend changes in appropriation language regarding poverty population data.<sup>1</sup>

The current language requires the use of decennial census data for the per-capita distribution of almost all LSC basic field funds. The 2010 census, however, did not collect poverty data for the fifty states, the District of Columbia or Puerto Rico. Management's proposal recommended (1) replacing the reference to the decennial census data with a reference to the poverty population "as determined by the Bureau of the Census," (2) reallocating the per-capita distribution every three years, and (3) phasing in the first reallocation over two years, 2013 and 2014.

After carefully considering the comments received, management recommends adoption of management's original July 2011 proposal.

### Background

Since 1996, the Legal Services Corporation's annual appropriation has mandated that the Corporation distribute most of its appropriated funds to basic field programs for LSC-defined geographic areas so as to provide an equal figure per individual in poverty for each geographic area. The appropriation has further mandated that the Bureau of the Census determine the number of individuals in poverty in each geographic area "on the basis of the most recent decennial census." The 2010 decennial census, however, did not collect poverty data for the 50 states, the District of Columbia or Puerto Rico, so "the most recent decennial census" will not provide a basis for determining the poverty population within those jurisdictions.

LSC management has proposed making recommendations to the President and to Congress that: (1) the Bureau of the Census determine of the number of individuals in poverty in each

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<sup>1</sup> The management proposal is attached; it and all of the comments can be accessed on the LSC website at: <http://www.lsc.gov/about/mattersforcomment.php>.

geographic area without reference to the decennial census; (2) LSC reallocate funding among geographic areas every three years based on updated poverty population determinations by the Bureau of the Census; and (3) LSC phase in the first reallocation over two years, in Fiscal Year 2013 and Fiscal Year 2014.

LSC management presented this proposal to the Committee on July 20, 2011. The Committee also received a presentation on recommendations from the National Legal Aid and Defender Association ("NLADA"). The Committee then presented management's proposal to the full board on July 21, 2011. The Board adopted the recommendation of management and the Committee that LSC publish management's proposal in the Federal Register for comment. On August 9, 2011, LSC published a notice at 76 Fed. Reg. 48904 regarding this issue, requesting comments within 30 days, and directing interested parties to the LSC website for copies of the recommendations of LSC management and NLADA.

### Summary of Comments

LSC received nineteen comments (including NLADA's recommendation as a comment). The comments are summarized below. They expressed the views of 25 institutions and three individuals. Two of these institutions provide a national perspective on legal services delivery issues: NLADA and the National Association of IOLTA Programs ("NAIP") (which endorsed all of NLADA's recommendations). Three other comments represented the views of multiple organizations: Louisiana's three LSC grantees, New York's five LSC grantees, and the State Bar of Arizona and the Arizona Foundation for Legal Services and Education. The attached table identifies all of the commenters and summarizes all of the comments. The general categories are as follows, with some comments falling into multiple categories. Not all comments addressed every issue.

#### 1. Determination of the Poverty Population

- Nine comments supported management's proposal that the Census Bureau determine the poverty population; two of these specifically recommended use of ACS data.
- Seven comments recommended that LSC have ultimate authority to determine the poverty population; one of these specifically recommend use of ACS data.
- Four comments recommended consideration of other data or adjustments to account for data collection problems, undercounts, and cost-of-living differentials among geographic areas.

#### 2. Redistribution of Funding

- Seven comments supported management's proposal to redistribute funding every three years.
- Eight comments recommended redistributing funding every five years.

- One comment did not specifically recommend any redistribution period, but recommended limiting any annual funding cuts attributable to changes in the location of the poverty population to between 6% and 8%.

### 3. First Redistribution

- Eleven comments supported management's proposal to phase in the first redistribution over 2013–2014.
- One comment recommended implementing the entire first redistribution in 2013.
- One comment recommended implementing the entire first redistribution in 2012.
- One comment recommended implementing the first redistribution over 2012–2013.
- One comment recommended phasing in the first redistribution over three years for 2013–14–15.
- One comment recommended no immediate redistributions. Instead, this comment recommended applying any cuts to LSC funds *pro rata* based on the current (2000 census) distribution and allocating any increases in LSC basic field appropriations over FY 2011 levels funds towards implementation of a new distribution.
- The same comment recommending no immediate redistribution recommended, in the alternative, a five-year phase in coupled with five-year redistributions and a five-year LSC grant cycle.

### 4. Proposing Elimination of LSC

- One anonymous comment recommended the elimination of LSC funding.

## Analysis of Comments

### 1. Proposals to Modify the Per Capita Distribution of Funding

LSC did not recommend any change in the current requirement to allocate funding among service areas “on a per capita basis relative to the number of individuals in poverty” (hereinafter “per capita poverty population basis”). Accordingly, the Federal Register notice did not invite comments on this issue. Some comments nonetheless recommended the use of alternate methods to allocate LSC funds among geographic areas. Southwest Virginia Legal Aid (“SWVLA”) suggested that in future years no grantee should receive less than its pro rata share of the 2011 LSC appropriation for field programs, even though, SWVLA observed, this would be “fundamentally unfair,” as some programs’ LSC funding would be greater than their “*pro rata* share of [the] poverty population warrant[s].” SWVLA argued this would be justified because cuts in LSC funding would “obliterate” some grantees’ ability to effectively serve their

communities. The program also noted that some grantees had greater opportunities than others to raise non-LSC funding.

The executive directors of the LSC grantees in Louisiana suggested a "limit of between 6% and 8%" on funding cuts resulting from shifts in the poverty because larger reductions would be "unnecessarily disruptive to the delivery of legal services."

Puerto Rico Legal Services recommended that LSC make "allowances in funding" based on the "impact of [the] cost of living in each jurisdiction." They suggested that these allowances could be based on the data used by Office Management and Budget to determine cost-of-living adjustments for federal employees who are transferred from one jurisdiction to another. They noted that the current LSC statutory formula explicitly permits LSC to use different measures to calculate the poverty populations of Alaska and Hawaii, which LSC does based on higher costs of living in those jurisdictions, similar to the approach of the Department of Health and Human Services.

Most comments urged that no change be made in the statutory provision requiring the distribution of LSC funds on a per capita poverty population basis. Many agreed with NLADA's view that this approach "represented the fairest, and least politically divisive, method of distribution. Arguments on considering such ancillary issues as the cost of urban/rural delivery, availability of non-LSC funding or other factors in distributing funds ... unduly complicat[e] the question of fair allocation and each contain[s] significant downsides."

Management recognizes that funding reductions constrain grantees' ability to serve clients and can disrupt service delivery. For each of the past sixteen years, however, Congress has consistently directed that LSC allocate funds on a per-capita basis relative to the distribution of the poverty population. Management's recommendation was based on this clear and continuing indication of Congressional intent, expressed in two separate, sequential subsections of each year's appropriation statute.

In addition, management believes that a per-capita distribution is the most objective and practical method for allocating funds among geographic areas. With respect to cost-of-living adjustments for different geographic areas, Congress has mandated that LSC calculate the poverty populations of Alaska and Hawaii using higher income thresholds than those used to calculate the poverty populations of the geographic areas on the mainland and Puerto Rico. These are two of the limited exceptions that Congress has explicitly recognized in the appropriation since 1996; management does not believe that any expansion of the well-settled exceptions after sixteen years is appropriate.

## 2. Census Bureau Determination of the Distribution of the Poverty Population

All but one of the comments discussed management's recommendation to have the Bureau of the Census determine the distribution of the poverty population. Many opposed allowing the Bureau of the Census to have final decision-making authority in this determination. Most of these comments advocated an approach that duplicated or was similar to NLADA's recommendation

that LSC have the “discretion to determine the number of poor people in each service area ‘based on the best available data identified by LSC through consultations with the Census Bureau’.”

The comments generally relied on a combination of four arguments in support of this recommendation. First, several comments asserted that the Census Bureau’s identification of the poverty population could be flawed because, as NLADA maintained, the Census Bureau lacks LSC’s “special understanding of the needs of grantee programs and low income clients.” The New York State LSC grantees similarly argued that LSC should make the ultimate determination because the “LSC Board members, management and staff, with a deep understand of rural and urban service delivery issues are better positioned to make this decision.” Second, some comments maintained that the LSC Board has ultimate responsibility to make this determination and should not defer to the Census Bureau. Third, several comments argued that LSC should have the statutory authority provided many federal agencies to identify the particular Census Bureau data or other data sets they consider most appropriate to identify the eligible population on which to base the distribution of federal funding. And fourth, some presumed that the Census Bureau would be limited to its own data, which would preclude the use of other data sources that could help ensure the most accurate determination of the distribution of the poverty population, especially regarding allegedly undercounted populations.

In addition, Legal Services of South Central Michigan challenged management’s view that leaving to the Census Bureau the determination of the poverty population necessarily expressed the will of Congress. The program stated that while this may have reflected the will of the Congress in 1996, the current Congress might support greater discretion for LSC.

Some comments recommended that LSC should consider using Census Bureau data as well as data from other sources (*e.g.*, the U.S. Department of Agriculture, the Department of Housing and Urban Development, the Bureau of Indian Affairs) to ensure that funds are allocated among geographic areas as accurately as possible. Others recommended determining the location of the poverty population based on the Census Bureau’s American Community Survey (“ACS”) data set.

Management has carefully considered these comments. Management does not believe they warrant a modification in its recommendation. First, neither the 1996 LSC appropriation nor any of the subsequent fifteen appropriations – including the FY2011 appropriation enacted by the current Congress – afforded LSC discretion in determining the distribution of the poverty population. The appropriation language has consistently required that funding be distributed “on a per capita basis relative to the number of individuals in poverty as *determined by the Bureau of the Census* to be within geographic area” (emphasis added). Congress has not vested that responsibility in the LSC Board. Management believes that going beyond the single necessary change related to the decennial census is ill-advised at this time, given the uncertain status of LSC funding levels and broader Congressional budget and legislative issues.

The recommendation that LSC have the ultimate authority to determine the poverty population because of its knowledge of the legal needs of the poor and the delivery systems that can most effectively and efficiently meet those needs does not reflect the actual scope of LSC’s

institutional expertise. LSC has expertise in the delivery of civil legal services to poor people. It does not have expertise in counting the poverty population of the United States; that is the role and expertise of the Bureau of the Census.

Nothing in management's proposal would require that the Census Bureau make the determination of the poverty population on the basis of a single Census Bureau data set or exclusively on the basis of Census Bureau data sets. The Census Bureau may conclude that the most accurate and valid determination of the poverty population in LSC-identified service areas requires the use of one or more Census Bureau data sets, or data from other sources.

Finally, those comments recommending that LSC use ACS data to determine the poverty population did not address management's concern that the availability and/or accuracy of necessary data bases could change in the future and that legislative language therefore should not mandate the use of particular data sets.

### 3. Frequency of Redistributions

An equal number of comments supported and opposed management's recommendation to reallocate funding based on updated poverty population data every three years. Most explained their positions in the context of what one termed "the great uncertainty of LSC's annual Congressional appropriation."

Those opposing the management recommendation supported a five-year reallocation cycle. Several of those comments noted their agreement with NLADA's assessment that shorter distribution periods would be "administratively burdensome and too disruptive for grantees." The comment of Colorado Legal Services elaborated on this perspective, maintaining that

[it] is enough for programs to respond to uncertain LSC funding from year to year. To frequently adjust to changes in poverty population as well, rather than benefiting low income clients, would make the management of programs, staffing, hiring, then possibly retrenching if the poverty population declines all the more difficult and should be limited to once every five years, not every three years as proposed. ... [S]tability and what level of predictability may be possible in this ever changing Congressional environment outweighs the benefit of more frequent changes to reflect the movement of poor people within the country.

Management believes that the alignment of LSC funding with the distribution of the poverty population provided by a three-year cycle would be more consistent with the core purpose of the allocation scheme mandated by the current appropriations language. The data on which reallocations will be based are likely to be significantly dated when the reallocations are first implemented. For example, the first ACS data set that will have 2010 county-level poverty estimates (the 2006-2010 five-year ACS) will not be available until December 2011. (This ACS data set is referenced here for illustrative purposes; LSC does not know if the Census Bureau will use it to determine the poverty population.) This data set will include data from as far back as January 2005, and the data "mid-point" will be December 15, 2007, before the onset of the

recession. State-level ACS data from 2007, 2008 and 2009 indicate that the downturn produced significant shifts in the nation's poverty population over those years. These trends are likely to continue through 2010. As a result, when the reallocation begins in 2013, many states and grantees will likely receive significantly less funding than their share of the poverty population in 2013 would warrant. With a five-year reallocation cycle, funding would not be adjusted until 2018. In that case, the data on which the distribution of 2017 funds would be based would be from 8 to 13 years old. A three-year cycle would cut these ages to 6 years and 11 years, reductions of 25% and 18% respectively.

Furthermore, a three-year reallocation cycle could actually enhance stability for grantees because the magnitude of shifts would likely be less dramatic over three years than over five years. (Current estimates indicate this would be the case for the 2005–2010 period.)

Finally, Census Bureau estimates of the U.S. poverty population (such as the ACS and the Small Area Income and Poverty Estimates ("SAIPE")) are updated annually and are publicly available. Grantees will be able to monitor changes in the distribution of the poverty population and undertake the planning, budgeting and other steps necessary to respond to the effects these shifts could have on their funding levels.

#### 4. Two-Year Phase-In of Next Reallocation

Nearly all comments supported management's recommendation to phase in the next funding reallocation during 2013 and 2014. The recommendation was supported even by several legal services programs that will likely see significant increases in the next reallocation. They agreed with other comments that delaying the full increase for a year would be less problematic for those gaining funds than a single-year implementation would be for those that would lose funds based on the reallocation. The executive directors of Louisiana's LSC grantees recommended a three-year phase in over 2012, 2013 and 2014. They calculated this would limit annual adjustments to 6% to 8%. In their view, a "larger cut in a single year would be a management nightmare" for a variety of reasons.

Three comments supported the implementation of the reallocation in a single year. One supported full implementation in 2013; the others advocated full implementation in 2012. Georgia Legal Services Program (GLSP) argued that delaying implementation of the reallocation until 2013 would "seriously harm states with large increases in poverty populations." GLSP also questioned "LSC's conclusion that grantees cannot prudently and effectively handle increases or decreases in funding levels," maintaining that legal services programs have become "very accustomed to planning and budgeting around both increases AND decreases in funding whenever they occur in a program's budget year" (emphasis in original).

Management recognizes that some programs will be significantly "underfunded" on a per-capita poor person basis until the reallocation is fully implemented and that legal services programs are better equipped than in the past to effectively adjust to changes in funding levels. Management also understands that even a two-year phase in will impose cuts on some grantees that could seriously affect their current capacities. Management nevertheless believes that a one-time, two-

year phase-in is warranted given the magnitude of the increases or decreases that grantees will experience. NLADA and nearly all commenters agree. Implementation for 2012 grants is not feasible because the recommended legislative changes will be a part of LSC's FY 2013 budget request. The FY 2012 appropriations process is already well under way.

#### Recommendation

Almost all of the comments raised issues that management considered in its earlier discussions with the Committee and in formulating the July proposal. Management's consideration and analysis of the comments confirms its view that the statutory language changes it previously recommended would best implement the will of Congress as expressed in current law and would most effectively balance the need of grantees for stability and the imperative to ensure that funding distributions reflect the current location of the poverty population across the country.

Table A: Summary of Comments. LSC management's recommendations are in **bold**.

Name (Alphabetized by <i>italicized</i> word.)	Data Decision			Redistribution		First Redistribution	
	Census Bureau	LSC	Other Data	3 year	5 year	2013-2014	Other
<b>Associations</b>							
NLADA (original recommendation)		X			X	X	
National Association of IOLTA Programs		X			X	X	
<b>Group Comments</b>							
Arizona Foundation for Legal Services & Education	X			X			2012
All Louisiana LSC Recipients (Three)	-	-	-	Annual cuts capped at 6-8%			2013-14-15
All New York LSC Recipients (Seven)		X			X	X	
<b>Institutions</b>							
Anishinabe Legal Services		X	X (BIA)	-	-	-	-
Asian American Justice Center	X (ACS)		X	X		X	
Atlanta Legal Aid	X			X		X	
Colorado Legal Services	X				X	X	
Georgia Legal Services Program	X			X			2012-2013
Micronesia Legal Services Corporation	X			-	-	-	
Puerto Rico Legal Services	X		X (cost-of-living)	-	X	X	
South Carolina Legal Services		X (ACS)			X		2013
South Carolina Access to Justice Commission	X (ACS)				X	X	
Legal Services of South Central Michigan		X		X		X	
Southwest Virginia Legal Aid Society	Apply increases toward new distribution. Apply cuts <i>pro rata</i> to current distribution.			Or 5-year phase in, 5-year redistribution and 5-year LSC grants.			
<b>Individuals</b>							
Terry Adams, U. Michigan poverty scholar		X	X	X		X	
Anonymous	Eliminate LSC funding.			-	-	-	-
Beatrice Sonnier	X			X		X	



## MEMORANDUM

**To:** Operations and Regulations Committee  
**From:** James J. Sandiman   
**Date:** July 13, 2011  
**Re:** Management Recommendation on Funding Reallocation Issues

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This memorandum provides the recommendations of LSC management on issues relating to the allocation of grant funding following the 2010 census.

### I. Background

As the Committee has been advised at prior meetings, current appropriations law requires LSC to allocate basic field funding among geographic areas on a "per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within [each] geographic area."<sup>1</sup> The pertinent statutory language is as follows:

Sec. 501. (a) Funds appropriated under this Act to the Legal Services Corporation for basic field programs shall be distributed as follows:

(1) The Corporation shall define geographic areas and make the funds available for each geographic area *on a per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within the geographic area*, except as provided in paragraph (2)(B). Funds for such a geographic area may be distributed by the Corporation to 1 or more persons or entities eligible for funding under section 1006(a)(1)(A) of the Legal Services Corporation Act (42 U.S.C. § 2996e(a)(1)(A)), subject to sections 502 and 504.

(2) Funds for grants from the Corporation, and contracts entered into by the Corporation for basic field programs, shall be allocated so as to provide—

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<sup>1</sup> Pub. L. 104-134, 110 Stat. 1321, H.R. 3019, April 26, 1996, *Omnibus Consolidated Rescissions and Appropriations Act of 1996* (hereinafter *Appropriations Act of 1996*), Sec. 501(a)(1).

(A) except as provided in subparagraph (B), an equal figure *per individual in poverty for all geographic areas, as determined on the basis of the most recent decennial census of population* conducted pursuant to section 141 of title 13, United States Code (or, in the case of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population counts historically used as the basis for such determinations); and

(B) an additional amount for Native American communities that received assistance under the Legal Services Corporation Act for fiscal year 1995, so that the proportion of the funds appropriated to the Legal Services Corporation for basic field programs for fiscal year 1996 that is received by the Native American communities shall be not less than the proportion of such funds appropriated for fiscal year 1995 that was received by the Native American communities.

(Emphasis added.)

Because the 2010 decennial census did not provide information on the number of individuals in poverty, a change in current law is necessary, and other changes may be appropriate. Specifically:

- Data other than the decennial census must be used to determine the number of individuals in poverty.
- Because the decennial census provided new poverty estimates only every ten years, the redistribution of LSC funds among service areas could previously be implemented only on a ten-year cycle. The alternative data sets that are available for identifying the distribution of the poverty population, by contrast, are updated annually. This will allow LSC to redistribute funding more frequently, thus aligning the allocation of basic field grants more closely with the location of the poverty population.
- The changes in the location of the poverty population since the last funding redistribution in FY2003 will result in significant reallocations among service areas. Given the magnitude of these changes, phasing in the new funding distributions may be desirable to enable grantees to adjust to their new funding levels.

## II. Distribution of Funding among Geographic Areas

### Recommendation

We recommend that Section 501(a)(2)(A) be amended as follows:

(A) except as provided in subparagraph (B), an equal figure per individual in poverty for all geographic areas, as determined by the Bureau of the Census on the basis of the ~~most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code~~ (or, in the case of the Republic of Palau, the Federated States

of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population count historically used as the basis for such determinations); and

## Explanation

We recommend this amendment for the following reasons:

- 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 addresses the census issue narrowly, directly, and concisely.
- It incorporates the language of subsection (a)(1) and therefore ensures consistency between subsections (a)(1) and (a)(2). It uses Congress's own, existing language to resolve the census issue.
- It leaves the identification of the appropriate data sets to determine the location of the poverty population to the agency with special skill and expertise in this area (the Bureau of the Census) and does not require LSC to make judgments about that subject.
- It does not tie the determination of the location of the poverty population to any specific data set that could become unavailable in the future, as has happened with the decennial census.

We note that other statutes providing for the allocation of federal funds to serve low-income populations give some discretion to the allocating agency in selecting the data sets to be used to locate the eligible population.<sup>7</sup> In addition, NLADA has recommended that LSC's determination of the number of poor people in each service area be based "on the best available data *identified by LSC* through consultations with the Census Bureau." (Emphasis added.) We think it preferable to leave the matter to the Census Bureau, as was Congress's intent in the current version of Section 501(a).

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<sup>7</sup> Examples of these provisions include the following:

- In allocating funds among local education agencies for the Department of Education (ED) Title I program, the "Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data . . . available from the Department of Commerce." (20 U.S.C. § 6333(e)(2)). The data actually used are from the Small Area Income and Poverty Estimates (SAIPE), which the Census Bureau prepares under contract with ED.
- In the allocation of funds among states for the ED's Individuals with Disabilities Education Act (IDEA), ". . . the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary . . ." (20 U.S.C. § 1411(d)(3)(A)(ii)). ED also uses SAIPE data for these purposes.
- The allocation of funding under the Department of Housing and Urban Development (HUD) Community Development Block Grant Program is based in part on "the extent of poverty," defined as the "number of people whose incomes are below the poverty level." The pertinent legislation specifies that "Poverty levels shall be determined by the Secretary pursuant to criteria provided by the Office of Management and Budget . . ." (42 U.S.C. § 5302(a)(9)). Further, the determination "shall be based . . . on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year." (42 U.S.C. § 5302(b)).
- The determination of the amount of federal matching funds (the "Federal percentage") for the Child Health Insurance Program "shall be promulgated by the Secretary . . . on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce." (42 U.S.C. § 1301j (a)(8)(B)).

It will be helpful to have language in the committee report accompanying new appropriations language specifying what the Census Bureau's duties are and how they are to be implemented. We will confer with the Office of Management and Budget and with the relevant committee staff members on how to accomplish this.

### **III. Frequency of Redistributions**

#### **Recommendation**

We recommend that LSC implement redistributions of funding among geographic areas on a three-year cycle.

#### **Explanation**

Previous redistributions of funding among geographic areas could occur no more frequently than once every ten years, because the redistributions had to be based on the most recent decennial census. The alternative data sets available to the Census Bureau for identifying the location of individuals in poverty, however, are updated annually, allowing the allocation of LSC funding to be more responsive to shifts in the distribution of the poverty population.

The frequency of redistributions must balance several competing concerns. On the one hand, funding distributions should be targeted as closely as possible to the location of the population eligible to be served. This concern weighs in favor of more frequent redistributions. On the other hand, grantees benefit from stability in funding criteria, so that they can plan their operations effectively, make hiring decisions, assess office locations, etc. Reallocations also impose an administrative burden on LSC itself. These concerns weigh in favor of less frequent redistributions.

We believe that annual redistributions would be too frequent and impose unacceptable burdens on both grantees and on LSC. We have considered three-year and five-year redistribution cycles, and we believe that a three-year cycle strikes the appropriate balance among the competing concerns for the following reasons:

- A three-year redistribution cycle will more effectively ensure that LSC funding is responsive to shifts in the location of the poverty population than will a five-year cycle. Aligning funding with the location of the eligible population to be served is a core purpose of the allocation scheme mandated by the appropriations legislation.
- A three-year cycle will allow the use of data that are two years more current than a five-year cycle.
- A three-year redistribution cycle will reduce the size of swings in the location of the poverty population and therefore of each grantee's share of available LSC funding.

NLADA has recommended a five-year redistribution cycle. While we believe that recommendation is reasonable, we think a three-year cycle is preferable.

Implementation of any multi-year redistribution cycle by means of annual appropriations legislation poses some challenges. We will have to work with the Office of Management and Budget and with congressional staff to accomplish this.

#### **IV. Phase-In of the Next Reallocation**

##### **Recommendation**

We recommend that the first redistribution of LSC funding among geographic areas based on new Census Bureau data be implemented over a two-year period. Fifty percent of the reallocation of funding among geographic areas resulting from changes in the distribution of the poverty population since the 2000 census would be implemented in Fiscal Year 2013. The remaining fifty percent of the redistribution would be implemented in Fiscal Year 2014. Future redistributions would not be phased in, but instead would be implemented in a single fiscal year.

##### **Explanation**

The importance of ensuring that the allocation of funding mirrors the actual distribution of the poverty population weighs against any phase-in of the redistribution. Nevertheless, we believe a phase-in is warranted for the following reasons:

- In the absence of a major increase in overall LSC funding, the redistribution will impose large funding losses on a number of programs. For example, data from the 2009 American Community Survey indicate that since the 2000 census, eight states' shares of the nation's poverty population fell by more than 20%, with the losses ranging as high as 30%. For some states, the losses will be even higher when 2010 data are included. These losses could have devastating consequences for some programs, especially given declines in funding from other sources, possible cuts in LSC funding, and the high percentage of grantee funding that comes from LSC in some of these states.
- The redistribution also will result in significant increases for a number of programs. For example, data from the 2009 American Community Survey indicate that since the 2000 census, twelve states' shares of the nation's poverty population increased by more than 15%, and eight states' shares increased by more than 20%, with the increases ranging as high as 29%. Funding increases of such magnitude in a single year could be difficult for programs to implement prudently and effectively. Accordingly, a two-year phase-in could improve grantees' ability manage and deploy LSC funds most efficiently and appropriately.
- NLADA has recommended that LSC implement the reallocation scheduled for FY 2013 over a period of two years.
- A phase-in of future reallocations will not be warranted because, with more frequent redistributions (see above), changes in the distribution of the poverty population and the resulting funding redistributions should not be nearly as significant as the changes that will occur with the 2013 redistribution.

Implementing a two-year phase by means of annual appropriations legislation will require our working with the Office of Management Budget and congressional staff.

## **V. Next Steps**

Once the Committee and the Board approve a proposed approach to dealing with the census issue, we recommend that the proposal be published promptly in the Federal Register with a request for public comment within thirty days. After receiving and considering public comment, the Committee and the Board can then make a final decision. LSC should be in a position to make a final recommendation to the Office of Management and Budget by early September of 2011.