

CRS Report for Congress

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Legal Services Corporation: Basic Facts and Current Status

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Summary

The Legal Services Corporation (LSC) is a private nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil matters. Although the authorization of appropriations for the Corporation expired at the end of FY1980, the LSC has operated for the past 24 years under annual appropriations laws. P.L. 108-199 includes \$338.8 million for FY2004 for the LSC and also includes a 0.59% across-the-board rescission and an additional 0.465% rescission of funding for the Commerce, Justice, State, Judiciary, and Related Agencies appropriation (which includes the LSC), thereby lowering the FY2004 LSC appropriation to \$335.3 million. For FY2005, the Bush Administration again requested \$329.3 million for the LSC. This is \$6 million less than the \$335.3 million (after the rescissions) that was appropriated for the LSC for FY2004. On July 8, 2004, the House passed H.R. 4754 which includes \$335.3 million for the LSC for FY2005 (H.R. 4754, See H.Rept. 108-576). On September 15, 2004, the Senate Appropriations Committee recommended \$335.0 million for the LSC for FY2005 (S. 2809, see S.Rept. 108-344). This report, which is continually updated, provides background information and tracks relevant legislation and appropriations measures.

Legislative History

The federal government has administered a program of legal services for the poor since 1966. Originally, the program was administered through the Office of Economic Opportunity, a now-defunct agency that had spearheaded the War on Poverty in the mid-1960s. In 1971, President Nixon proposed establishment of a separate corporation to deliver legal services to insulate the program from political pressure. Authorizing legislation was enacted in 1974 (P.L. 93-355), and the LSC came into existence the following year. In 1977, Congress extended the Legal Services Corporation Act through FY1980 (P.L. 95-222). Although Congress has not reauthorized the LSC statute since FY1980, it has continued to fund the LSC every year and has included legislative language affecting LSC activities in annual appropriations laws.

Funding History

When the LSC was first established, its initial goal was to provide all low-income people with at least “minimum access” to legal services, defined as the equivalent of two legal services attorneys for every 10,000 poor people. This goal was briefly achieved in FY1980, but not maintained due to inflation and subsequent budget cuts. For example, in FY1995, the LSC estimated an appropriation of \$848 million would have been needed to achieve minimum access. However, Congress appropriated \$415 million for FY1995 and subsequently rescinded \$15 million of that amount. (Currently there is one legal services attorney for every 11,500 poor people.) Funds for the LSC are included in the annual appropriation for the Departments of Commerce, Justice, State, Judiciary and Related agencies. The table below shows LSC appropriations for selected years from FY1976 (first full year of program operations) to FY2004. Efforts to reduce funding for the LSC began in FY1996 and have now begun to reverse. However, current funding still remains below the LSC’s highest level of \$400 million in FY1994 and FY1995.

LSC Appropriations History

(\$ in millions)

FY	\$	FY	\$	FY	\$	FY	\$
1976	92	1990	317	1995	400	2000	304
1980	300	1991	328	1996	278	2001	329
1984	275	1992	350	1997	283	2002	329
1988	306	1993	357	1998	283	2003	337
1989	309	1994	400	1999	300	2004	335

FY1996. For FY1996, Congress funded the LSC at \$278 million, for a reduction of almost 31% from the previous year. In its FY1996 budget resolution, the House assumed a three-year phase-out of the LSC, recommending appropriations of \$278 million in FY1996, \$141 million in FY1997, and elimination by FY1998. The House Budget Committee stated in its report (H.Rept. 104-120), “Too often, ... lawyers funded through federal LSC grants have focused on political causes and class action lawsuits rather than helping poor Americans solve their legal problems.... A phase out of federal funding for the LSC will not eliminate free legal aid to the poor. State and local governments, bar associations, and other organizations already provide substantial legal aid to the poor.” The FY1996 appropriation for the LSC entirely eliminated funding for supplemental legal assistance programs, including Native American and migrant farm worker support, national and state support centers, regional training centers, and other national activities.

FY1997-FY2000. Between FY1996 and FY2001, LSC funding was gradually increased. For FY1997, Congress funded the LSC at \$283 million (P.L. 104-208). For FY1998, Congress again funded the LSC at \$283 million (P.L. 105-119). For FY1999, Congress funded the LSC at \$300 million (P.L. 105-277). For FY2000, Congress funded the LSC at \$305 million, but also included a provision in the legislation that mandated a 0.38% government-wide rescission of discretionary budget authority for FY2000. The funding for the LSC was thereby decreased to \$304 million (P.L. 106-113).

FY2001. For FY2001, the Clinton Administration requested \$340 million for the LSC. The Clinton Administration had requested \$340 million every year since FY1997, in an effort to partially restore the 1996 cutback in funding. The proposal would have continued all existing restrictions on LSC-funded activities. For FY2001, the House

Appropriations Committee recommended a total of \$141 million for the LSC (H.R. 4690). On June 26, 2000, the House approved H.R. 4690 which included \$275 million for the LSC. For FY2001, the Senate Appropriations Committee recommended a total of \$300 million for the LSC. The Senate, however, did not vote on its version of the bill. Instead, it approved the version approved by the conference committee, which was agreed to on October 26, 2000. The conference report on H.R. 4942 (H.Rept. 106-1005) provided \$330 million for LSC for FY2001. The \$330 million appropriation for LSC included \$310 million for basic field programs and independent audits, \$10.8 million for management and administration, \$2.2 million for the inspector general, and \$7 million for client self-help and information technology. Both the House and the Senate approved the conference committee recommendation for LSC. H.R. 4942, signed by President Clinton on December 21, 2000 as P.L. 106-553, included \$330 million for LSC. The reader should note that P.L. 106-554 mandated a 0.22% government-wide rescission of discretionary budget authority for FY2001 for almost all government agencies. Thus, the \$330 million appropriation for LSC for FY2001 was reduced to \$329.3 million.

FY2002. For FY2002, the Bush Administration requested \$329.3 million for LSC (the same amount that was obligated for the program for FY2001). The proposal included all restrictions on LSC-funded activities that were currently in effect. For FY2002, the House Appropriations Committee recommended a total of \$329.3 million for LSC. In carrying out LSC's vision of an effective and efficient statewide system of delivering legal services to the poor, grantees had been merging and reconfiguring their legal services programs to better use every federal dollar allocated to them. The House report (H.Rept. 107-139) indicated concern about the LSC overruling, without appeal, certain configurations implemented by grantees via the state planning process. The House report directed LSC to review the state planning process and the concerns raised and report back to the Committee by September 4, 2001, with a proposal (including input from the stakeholders) that outlined the reconfiguration standards and the process for states to appeal LSC's decisions. On July 18, 2001, the House passed H.R. 2500, which included \$329.3 million for LSC. For FY2002, the Senate Appropriations Committee also recommended \$329.3 million for LSC with existing program prohibitions. On September 13, 2001, the Senate passed H.R. 2500, which included \$329.3 million for LSC.

The conference report on H.R. 2500 included \$329.3 million for LSC for FY2002. This was identical to the FY2001 appropriation for LSC (after the rescission) and the Bush Administration's FY2002 budget request for LSC. The conference report's recommendation for LSC included \$310 million for basic field programs, \$12.4 million for management and administration, \$4.4 million for client self-help and information technology, and \$2.5 million for the inspector general. It also included existing provisions restricting the activities of LSC grantees. The conference report (H.Rept. 107-278) was passed by the House on November 14, 2001, and by the Senate on November 15, 2001. H.R. 2500 was signed into law (P.L. 107-77) on November 28, 2001.

FY2003. For FY2003, the Bush Administration requested \$329.3 million for LSC. On July 18, 2002, the Senate Appropriations Committee recommended a total of \$329.4 million for the LSC for FY2003 (S. 2778; see S.Rept. 107-218). This is \$97,000 above the FY2002 appropriation for LSC and the Bush Administration's FY2003 budget request for the LSC (it included funds for a 4.1% pay adjustment). The House did not introduce a bill for CJS appropriations for FY2003. H.J.Res. 18 (P.L. 108-5), the eighth continuing resolution for FY2003 appropriations, passed by both the House and Senate on February

5, 2003, among other things, continued funding of the LSC at the FY2002 level through February 20, 2003. H.J.Res. 2, which was amended and agreed to (S.Amdt. 1) by the Senate on January 23, is an omnibus appropriations bill that, among other things, would have increased LSC funding by \$19 million to \$348.4 million in FY2003 to ensure that no service area receives less LSC funding for FY2003 than the area received for FY2002 as a result of the change in state poverty populations (based on 2000 Census data). On February 13, 2003 before H.J.Res. 18 expired both the House and Senate passed the conference report on H.J.Res. 2. P.L. 108-7 (signed into law on February 20, 2003) increased the LSC funding by \$9.5 million to \$338.8 million for FY2003 to offset decennial Census funding reallocations. It also continued all existing restrictions on LSC-funded activities. P.L. 108-7 mandated a 0.65% across-the-board rescission, thus the FY2003 appropriation for the LSC was \$336.6 million.

FY2004. For FY2004, the Bush Administration requested \$329.3 million for the LSC. On July 16, 2003, the House Appropriations Committee recommended a total of \$338.8 million for the LSC for FY2004 (H.R. 2799, See H.Rept. 108-221). This is \$2.2 million above the FY2003 appropriation for LSC (the same amount as the original FY2003 appropriation before the 0.65% rescission); and \$9.5 million above the Bush Administration's FY2004 budget request for the LSC. On July 23, 2003, the House passed H.R. 2799 which included \$338.8 million for the LSC. On September 5, 2003, the Senate Appropriations Committee also recommended \$338.8 million for the LSC for FY2004 (S. 1585, See S.Rept. 108-144).

On December 8, 2003, the House passed H.R. 2673, the conference report (H.Rept. 108-401) on a consolidated appropriations bill. The conference agreement includes \$338.8 million for the LSC, as proposed in both the House and Senate bills. The conference report includes \$317.5 million for basic field programs and required independent audits, \$13.3 million for management and administration, \$3.0 million for client self-help and information technology, \$2.6 million for the inspector general, and \$2.5 million in grants to offset losses stemming from the recent census-based reallocations. It also includes existing provisions restricting the activities of LSC grantees. Moreover, H.R. 2673 authorizes a 0.59% across-the-board government-wide rescission and an additional 0.465% uniform rescission applicable only to funding for the Commerce, Justice, State, and Related Agencies appropriation (which includes the LSC), thereby lowering the FY2004 LSC appropriation to \$335.3 million. The Senate passed H.R. 2673 on January 22, 2004; and it became P.L. 108-199 on January 23, 2004.

FY2005. For FY2005, the Bush Administration requested \$329.3 million for the LSC. The FY2005 budget request for the LSC includes \$310.4 million for basic field programs and required independent audits, \$13.3 million for management and administration, \$3 million for client self-help and information technology, and \$2.6 million for the inspector general. The budget request also includes existing provisions restricting the activities of LSC grantees.

On June 23, 2004, the House Appropriations Committee recommended \$335.3 million for the LSC for FY2005 (H.R. 4754, See H.Rept. 108-576). This amount is the same as the FY2004 appropriation for the LSC (after the rescissions); and \$6.0 million above the Bush Administration's FY2005 budget request for the LSC. The House Committee recommendation for the LSC includes \$316.6 million for basic field programs and required independent audits, \$13.2 million for management and administration, \$2.9

million for client self-help and information technology, and \$2.6 million for the inspector general. It also includes existing provisions restricting the activities of LSC grantees. Also, the House Committee recommendation allows the LSC to spend up to \$1 million of prior-year funding balances for a law school student loan repayment pilot program in FY2005 to encourage more lawyers to pursue careers in legal assistance. On July 8, 2004, the House passed H.R. 4754 which includes \$335.3 million for the LSC for FY2005.

On September 15, 2004, the Senate Appropriations Committee recommended \$335.0 million for the LSC for FY2005 (S. 2809, see S.Rept. 108-344). The Senate Committee recommendation for the LSC includes \$312.251 million for basic field programs and required independent audits, \$13.9 million for management and administration, \$3.4 million for client self-help and information technology, \$2.6 million for the inspector general, and \$2.849 million for grants to offset losses due to Census adjustments. It also includes existing provisions restricting the activities of LSC grantees.

Current Activities

Pursuant to its 1998 State Planning Initiative, the LSC has sought to streamline its delivery system. During 2003, the LSC funded 143 local programs (which operated in all states, the District of Columbia, and five U.S. territories) employing about 3,600 attorneys. (See: CRS Report RL32451, *The Legal Services Corporation: Distribution of Funding*.) These numbers are reduced from 1994, when 320 local programs employed about 4,500 attorneys. Each local program is governed by its own board of directors, of which a majority are attorneys and one-third are eligible clients. Local programs establish their own eligibility criteria, which may not exceed 125% of the federal poverty guidelines. Each local program must spend an amount equal to at least 12.5% of its basic grant to encourage private attorneys to participate in the delivery of legal aid to the poor. LSC is governed by an 11-member board, appointed by the President and confirmed by the Senate, of which no more than six members may be of the same political party.

During 2003, legal services attorneys closed 935,793 cases. Family issues such as child support, divorce, and separation were the substance of about 40% of cases handled by field offices; housing issues, including eviction cases, comprised about 25% of cases; income maintenance issues represented another 15% of cases; and consumer, finance, and individual rights issues comprised about 20% of cases. Most of the cases handled by LSC are resolved through advice and referral. Only about 10% of cases were resolved in court, primarily because they involved family law issues (e.g., protective orders, child support, etc.) in which court action was required by state law.

Restrictions on Activities

Since its inception, the legal services program has been controversial, and Congress has imposed restrictions on the activities of local attorneys. The authorizing statute contains restrictions against lobbying, political activities, class actions except under certain conditions, and cases involving abortion, school desegregation, and draft registration or desertion from the military. Additional restrictions have been included in appropriations laws each year. Under the current appropriations law, LSC grantees may not: engage in partisan litigation related to redistricting; attempt to influence regulatory, legislative or adjudicative action at the federal, state or local level; attempt to influence

oversight proceedings of the LSC; initiate or participate in any class action suit; represent certain categories of aliens, except that nonfederal funds may be used to represent aliens who have been victims of domestic violence or child abuse; conduct advocacy training on a public policy issue or encourage political activities, strikes, or demonstrations; claim or collect attorneys' fees; engage in litigation related to abortion; represent clients in eviction proceedings if the eviction was based on drug-related activities; represent federal, state or local prisoners; participate in efforts to reform a federal or state welfare system;¹ or solicit clients. Also, LSC grantees may not file complaints or engage in litigation against a defendant unless each plaintiff is specifically identified, and a statement of facts is prepared, signed by the plaintiffs, kept on file by the grantee, and made available to any federal auditor or monitor. LSC grantees must establish priorities, and staff must agree in writing not to engage in activities outside these priorities. Moreover, federal law prohibits LSC from receiving nonfederal funds, and grantees are prohibited from receiving non-LSC funds, unless the source of funds is told in writing that these funds may not be used for any activities prohibited by the LSC Act or the appropriations law. However, grantees may use non-LSC funds to comment on proposed regulations or respond to written requests for information or testimony from federal, state, or local agencies or legislative bodies, as long as the information is provided only to the requesting agency and the request is not solicited by the LSC grantee. Grantees are required to maintain time-keeping records and account for any nonfederal funds received.

Non-LSC Funding for Legal Services

In 2002, non-LSC resources supporting legal services totaled about \$608 million, up from \$263 million in 1998.² The sources of these funds included Interest on Lawyers' Trust Accounts (IOLTAs),³ state and local grants, foundation and other private sector grants, and other federal programs including the Social Services Block Grant and Community Development Block Grants. In addition, in 2000, 100,000 private lawyers accepted referrals to provide legal services to the poor, primarily via LSC-funded pro bono programs.

¹ On Feb. 28, 2001, the Supreme Court held in the case of *Legal Services Corporation v. Velazquez*, 121 S. Ct. 1043 (2001), that an LSC funding restriction related to welfare reform violates the First Amendment (i.e., freedom of speech) rights of LSC grantees and their clients and is thereby unconstitutional. The Supreme Court agreed with the Second Circuit Court's ruling that, by prohibiting LSC-funded attorneys from litigating cases that challenge existing welfare statutes or regulations, Congress had improperly prohibited lawyers from presenting certain arguments to the courts, which had the effect of distorting the legal system and altering the traditional role of lawyers as advocates for their clients.

² Center for Law and Social Policy. *Civil Legal Aid in the United States: An Overview of the Program in 2003*, by Alan W. Houseman. Sept. 2003. pp. 3-4.

³ On Mar. 26, 2003, the Supreme Court issued a 5-4 decision that allows IOLTA funds to continue to be a significant source of funding for legal services programs. IOLTA funds represent interest earned on client deposits that are placed into a pooled account by attorneys or law firms for short periods of time. In 2002, \$133 million in IOLTA funds was used to help fund legal services programs. In *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (2003), the Supreme Court ruled that there was no taking of client property without just compensation and that the IOLTA program was constitutional under the "takings clause" of the Fifth Amendment of the Constitution. Because the decision was written so narrowly, many observers suspect that there will be continued litigation over IOLTA funds.