

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 22 years under annual appropriations laws. H.R. 2500, the FY2002 appropriations bill for the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies, was signed into law (P.L. 107-77) by President Bush on November 28, 2001. It included \$329.3 million for the LSC, the amount requested by the Bush Administration. Current funding still remains below the Corporation's highest level of \$400 million in FY1994 and FY1995. For FY2003, the Bush Administration has requested the current level funding of \$329.3 million for the LSC. On July 18, 2002, the Senate Appropriations Committee recommended a total of \$329.4 million for the LSC (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. This short report provides background information and tracks relevant legislation and appropriations measures. This report is continually updated.

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).

Congress has not succeeded in reauthorizing the LSC statute since the authorization of appropriations expired after FY1980. No attempt has been made to reauthorize the LSC since the 104th Congress which considered conflicting proposals that either would have abolished and replaced the LSC with a block grant to states, or would have

reauthorized the LSC in its current form. None of the proposals were enacted. Nonetheless, Congress has continued to fund the LSC every year and has included legislative language affecting LSC activities in annual appropriations laws.

Funding History

When the Corporation 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.

Funds for the Corporation are included in the annual appropriation for the Departments of State, Justice, Commerce, Judiciary and related agencies. The table below shows LSC appropriations for selected years between FY1976 (the first full year of program operations) and FY2002. Efforts to reduce funding for the Corporation began in FY1996 and have now begun to reverse.

LSC Appropriations History

(\$ in millions)

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

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 3-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 \$278 million appropriation for the LSC in FY1996 provided funding for basic field programs and audits, the LSC inspector general, and administration and management. However, funding was eliminated entirely 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 the LSC. The proposal included all restrictions on LSC-funded activities that were currently in effect. The Administration's FY2002 request for LSC (\$329.3 million) was the same as the amount that was obligated for the program for FY2001.

For FY2002, the House Appropriations Committee recommended a total of \$329.3 million for LSC. This amount was the same as the FY2001 appropriation (after accounting for the 0.22% government-wide rescission) and President Bush's FY2002 budget request for the program. The House Committee'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. The House Committee's recommendation also included existing provisions restricting the activities of LSC grantees. In carrying out LSC's vision of an effective and efficient statewide system of delivering legal services to the poor, grantees have been merging and reconfiguring their legal services programs to better use every federal dollar allocated to them. The House Committee 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 Committee report directed the 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 the LSC.

For FY2002, the Senate Appropriations Committee recommended a total of \$329.3 million for the LSC. This was identical to the FY2001 appropriation for LSC (after the rescission) and the Bush Administration's FY2002 budget request for the LSC. The Senate bill's LSC program allocations were identical to those in the House bill. The Senate Committee's recommendation also included existing program prohibitions. On September 13, 2001, the Senate passed H.R. 2500, which included \$329.3 million for the LSC.

The Conference Committee 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 Committee 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. The Conference Committee report 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) by President Bush on November 28, 2001.

FY2003. For FY2003, the Bush Administration again requested \$329.3 million for the LSC. However, the amounts for a couple of the components differ. The FY2003 budget request includes \$310 million for basic field programs, \$13.3 million for management and administration (rather than \$12.4 million as currently appropriated), \$3.4 million for client self-help and information technology (rather than \$4.4 million as currently appropriated), and \$2.6 million for the inspector general (rather than \$2.5 million as currently appropriated). The FY2003 budget request also would continue all restrictions on LSC-funded activities currently in effect. The Administration's FY2003 request for LSC (\$329.3 million) is the same as the amount currently obligated for the program for FY2002. Historically, the Corporation's highest level of funding was \$400 million in FY1994 and FY1995.

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 includes funds for a 4.1% pay adjustment). The FY2003 Senate Committee budget request includes \$310 million for basic field programs, \$13.3 million for management and administration, \$3.4 million for client self-help and information technology, and \$2.6 million for the inspector general. The Senate Appropriations Committee FY2003 budget request also would continue all restrictions on LSC-funded activities currently in effect.

Current Activities

During 2001, the LSC funded 207 local programs, which operated through approximately 900 neighborhood law offices, employing about 3,600 attorneys and 1,400 paralegals. These numbers are reduced from 1994, when 320 local programs operated more than 1,200 neighborhood law offices and employed 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. Each local program must spend an amount equal to at least 12.5% of its basic field grant to encourage participation by private attorneys in the

delivery of legal services to low-income clients. Local programs establish their own eligibility criteria, which may not exceed 125% of the federal poverty guidelines. The LSC is governed by an 11-member board of directors, appointed by the President and confirmed by the Senate, of which no more than six members may be of the same political party.

During 2001, legal services attorneys closed a little over one million cases. Family issues such as child support, divorce, and separation were the substance of about 38% of cases handled by field offices. Housing issues, including assistance in cases of eviction, comprised about 23% of cases, and income maintenance issues, including assistance to individuals in claiming benefits, represented another 12% of cases. Other cases involved consumer finance, employment, health, and education-related issues. Most of the cases handled by the LSC in 2001 were resolved through advice and referral. Only 10% of cases were resolved in court, primarily because they involved family law issues (e.g., protective orders, child custody, 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, including the funding measure for FY2003.

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 federal, state or local prisoners; participate in efforts to reform a federal or state welfare system;¹ represent clients in eviction proceedings if they have been evicted from public housing because of drug-related activities; or solicit clients. In addition, 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

¹ On February 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.

establish priorities, and staff must agree in writing not to engage in activities outside these priorities.

Grantees also are required to maintain time-keeping records and account for any nonfederal funds received. 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.

Non-LSC Funding for Legal Services

In 1999, non-LSC resources supporting legal services activities totaled approximately \$308 million, up from \$263 million in 1998. The sources of these funds included Interest on Lawyers' Trust Accounts (IOLTAs),² state and local grants, foundation and other private sector grants, and other federal programs including the Social Services Block Grant under Title XX of the Social Security Act and Community Development Block Grants. In addition, in 2000, 100,000 private lawyers accepted referrals to provide legal services to the poor, primarily through LSC-funded pro bono programs.

² On June 15, 1998, the Supreme Court issued a decision that may affect the extent to which IOLTA funds will be available for legal services in the future. These funds represent interest earned on sums that are deposited by legal clients with attorneys for short periods of time. A substantial amount of these funds (roughly \$164 million in 1999) are used to help fund legal services programs. In *Phillips v. Washington Legal Foundation*, 524 US 156, 118 SCt 1925 (1998), the Supreme Court ruled that these funds are the private property of clients, and returned the case to the lower court to determine whether the state (i.e., Texas) was required to compensate the clients for "taking" these funds. On January 28th, 2000, United States District Court dismissed the case, finding that there was no taking of client property without just compensation. The plaintiff's appeal of that ruling to the Fifth Circuit Court of Appeals was argued on February 6, 2001. On October 15, 2001 the U.S. Court of Appeals for the Fifth Circuit reversed the January 2000 District court decision, finding that the Texas IOLTA program violated the Fifth Amendment of the United States Constitution. It found that, as administered in Texas, the IOLTA program amounted to a per se taking of client property and entitled the appellants (Washington Legal Foundation) to declaratory relief. The United States Court of Appeals for the Fifth Circuit (5th Circuit, No. 00-50139) found that the Texas IOLTA program amounted to an unconstitutional per se taking of client property that entitled the plaintiffs to injunctive relief without a state determination of whether just compensation was due. A similar case brought by the same plaintiff, *Washington Legal Foundation v. Legal Foundation of Washington*, 236 F.3d 1097 (9th Cir. 2001), has proceeded through the Washington State federal District Court and the Ninth Circuit Court of Appeals. Nonetheless, IOLTA programs nationwide remain fully operational.