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NLADA Comments on the Draft 2021 – 2024 LSC Strategic Plan

We write these comments in response to LSC's notice in the Federal Register soliciting input for LSC's draft of its 2021–2024 LSC Strategic Plan. They are submitted on behalf of the National Legal Aid & Defender Association (NLADA) and are our attempt to best represent the diverse views, thoughts, and concerns of NLADA's members. In preparing these comments, we consulted with our individual members, as well as a number of our committees, representing LSC recipients around the country.

We thank LSC for the opportunity to comment on the draft and for the thoughtful work required to develop a strategic plan in a time of great uncertainty. This response summarizes a few of the key points we would like for you to consider in moving forward. We hope they will be helpful in developing a final draft that can be as useful and beneficial as possible to LSC, its grantees, and the entire legal aid community.

The involvement of LSC staff, management, and each and every board member in achieving the stated goals of the 2017–2020 Strategic Plan and advancing the mission of LSC has been critical to not just surviving during turbulent times, but to thriving in the face of enormous challenges. Efforts to secure congressional funding, raise public awareness of the legal problems of the poor, assist programs in innovation, and other board and staff initiatives are just examples of the real results LSC has achieved over the past four years. These positive results speak to the power of LSC when focused on its goals and also the important practice of thinking critically about how LSC defines its priorities for the future.

While we believe much of what is included in this draft provides clear and focused direction for the Corporation, these comments focus on where we believe the LSC Strategic Plan can be improved. We have organized our suggestions thematically, noting where certain themes are relevant to multiple goals or initiatives in the current draft.

1. LSC SHOULD PLACE A GREATER EMPHASIS ON COLLABORATION WITH AND SEEKING INPUT FROM THE LARGER LEGAL AID COMMUNITY GENERALLY AND LSC GRANTEES IN PARTICULAR

a. Making Engagement with the Legal Aid Community a Key Theme of The Strategic Plan

NLADA urges LSC to identify collaboration with the legal aid community as a more explicit and expansive priority in the Strategic Plan. NLADA believes LSC has every intention of moving forward in a collaborative fashion, soliciting meaningful input from grantees, client communities, and national partners to the maximum extent possible. Given that, it is imperative that such intentions are clearly identified as a priority in the LSC Strategic Plan.

LSC has done a tremendous job in the past four years in expanding its reach. Whether it's across the aisles of congress, in the business sector, in rural communities, or in traditional or social media, LSC has increased its presence and influence. This is no small feat, and it is one that benefits everyone who is dedicated to the high quality provision of legal services for the poor. Still, as you often acknowledge, LSC cannot do it alone.

This draft correctly identifies many of the things LSC can do to improve the quality of legal services. Much of it, however, is in fact outward facing, focused on how LSC can and will help others improve. This includes, among other things:

- Significantly expanding the training resources LSC offers
- Promoting peer support and collaboration among grantees
- Assessing grantees capacity
- Identifying benchmarks for performance
- Recommending practical solutions to improve the stewardship of LSC funds
- Identifying underserved populations and evaluating their circumstances
- Expanding the use of grantee client stories
- Including and elevating the voices of clients in national discussions

This list is illustrative, not exhaustive, but it provides a good sample in which to emphasize the critical need for meaningful collaboration with others.

If LSC were to attempt to address any one of these items without significant input from its grantees, the results would be less than optimal. Yet many of the initiatives identified within the goals do not mention collaboration with grantees, client communities, or other national partners. The grantees, the organizations who serve clients day in and day out, will often be in the ideal position to understand the challenges underserved populations are facing or what a reasonable benchmark for quality legal services would look like, or at least why a proposed benchmark might be problematic. Further, they are also in the best position to inform LSC on issues such as their capacity to comply with new standards or policies.

Going beyond LSC grantees, NLADA urges LSC to include more on how they plan to work collaboratively with client communities. In Goal 1, Initiative 1, LSC sets a goal of developing and providing training to assist potential client-eligible board members. In Goal 2, initiative 2, LSC notes

their intention to “include and elevate the voices of clients in national conversations.” First, we want to applaud LSC for including both of these critical items in the Strategic Plan. NLADA enthusiastically supports both of them. We also wish to emphasize that these efforts must be informed by in-depth collaborations with the client community, collaborations that likely could be facilitated by LSC grantees or other national partners.

In addition to LSC grantees and client organizations, there are a number of national organizations with whom LSC can continue and even deepen their ongoing relationship. NLADA, The American Bar Association (The ABA), the Management Information & Exchange (MIE), and others have spent years developing trainings, convening the field, and developing events and resources to facilitate peer support. We are all encouraged that LSC wishes to expand its training and support resources for grantees, but we also hope that LSC will do so with an eye toward what already exists for the field. The work of legal services is so often marked by a shortage of resources, and it helps no one if we are duplicating efforts.

NLADA understands that no strategic plan will ever include a detailed breakdown of how LSC will conduct outreach at every stage of each project. Still, when LSC discusses how they hope to expand their efforts, consider new ideas, or embark on new projects, it is important the plan makes clear that collaboration will be a key element, that LSC is committed to listening to the field and the larger legal aid community. Such a priority could be added as a separate initiative, emphasizing that all LSC action will be informed by collaboration with the field, or it could be added within initiatives and include descriptions about how the results LSC is pursuing will be achieved through and with the input of its grantees and other relevant communities and organizations.

b. Acknowledging the Unique Need for Collaboration on Specialized Grants

In addition to the basic field grants, LSC also awards funding that is directly targeted at specific populations, such as agricultural workers and Native Americans. These special grants help LSC grantees provide services for which there is a great need. Furthermore, the grantees who provide services through these grants have a unique expertise within the legal aid field.

In terms of Native Americans, the end of Goal 1, initiative 1, reads as follows:

Undertake a comprehensive analysis of LSC’s Native American service areas and its Native American allocations to assess whether: (1) any Native American services areas need to be redrawn to account for geographic shifts in the nation’s Native American population, and (2) LSC needs to adjust the grant allocations to those service areas.

It is not clear from the way it is written, or looking at the Strategic Plan as a whole, what input from the field LSC would or would not be seeking. NLADA wishes to emphasize the critical need for LSC to seek significant feedback *before* embarking on any analysis. In particular, LSC should be in conversation with the programs who currently provide legal services to Native American communities and the Native American tribes themselves. These conversations should not be limited to evaluating LSC’s analysis, but help inform how the analysis should be conducted.

Under EO 13175, federal agencies are required to defer to and consult with tribes when considering any policies that “have tribal implications.”¹ Further, President Biden issued a memorandum earlier this year, reminding federal agencies and departments that EO 13175 requires them to engage in “regular, meaningful, and robust consultation” with tribal officials when considering policies with tribal implications.² Although we understand that LSC is not a federal agency, we encourage LSC to proceed with the underlying principles of EO 13175 and work extensively with Native American communities in the development of any plan or analysis.

In looking at the proposal as it is briefly summarized in the Strategic Plan, NLADA was particularly concerned by the language of “geographic shifts in the nation’s Native American population.” First, determining Native American populations is an extremely complicated issue, and it would be a mistake to make any such determinations without consulting with Native American communities and service providers. Second, a number of legal services that programs offer to Native American Tribes are not necessarily population based. The draft also mentioned the possibility that some “Native American Service Areas,” might have to be “redrawn.” Given that most programs serving these communities are either statewide programs or serving particular reservations, it is unclear how LSC could go about “redrawing” the areas or how doing so would be appropriate. NLADA would recommend LSC review the 1998 report to LSC written by Eric Dahlstrom and Randolph Barnhouse, “Legal Needs and Services in Indian Country,” and use that as a reference point. Given the complexities of these issues, we urge LSC to proceed cautiously and only after significant input from the field.

In terms of agricultural workers, this work and those grants receive no mention in the Strategic Plan. NLADA suggests LSC acknowledge within the Strategic Plan that the need for these critical services still exists. Additionally, it would be encouraging to see LSC make a commitment to consult with the field in this area and ensure that LSC staff includes individuals with special expertise on this topic.

2. RACIAL EQUITY SHOULD BE IDENTIFIED MORE EXPLICITLY AS A CRITICAL MISSION OF LEGAL SERVICES

We applaud LSC for identifying that the health and economic impacts of the COVID-19 pandemic have had a disproportionate impact on people of color. It is important to note, however, that COVID-19 is not the first time that people of color have suffered a disproportionate impact when it comes to negative economic and health outcomes in this country. In fact, institutional racism in the United States has existed since its founding, and it persists today. It is this institutional racism that creates disparate negative impacts for people of color in almost every facet of society. It is the reason that people of color have always had higher poverty rates than white people in the United States, and why people of color have, accordingly, always been overrepresented in the “LSC eligible” population.

The pernicious justice gap is not race neutral, and we cannot pretend that it is or ignore that racial inequities are built into the structures of our justice system. If the goal is to tackle the justice gap in this country, we, as a legal aid community, have to come to terms not just with the legacy of historic

¹ Exec. Order No. 13175, 3, C.F.R. 67249 (Nov. 6, 2000).

² Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021, *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>

racism from our past but also the racist practices that persist in our present. If we do not address this head on, we have no hope to stamp out the racial disparities from our future. And if we cannot do that, we have no hope of addressing so many of the problems that are the root cause of the justice gap in this country.

We recommend that LSC explicitly identify racial equity as a necessary mission of legal services and a critical part of their 2021–2024 Strategic Plan.

3. DIVERSITY, EQUITY, AND INCLUSION INITIATIVES SHOULD INCLUDE A MENTION OF LEADERSHIP POSITIONS

First, NLADA wants to thank LSC for developing well-thought out initiatives in Goal 3 about hiring and retaining a diverse workforce and a commitment to diversity, equity, and inclusion principles. In particular, we are encouraged by the language that LSC seeks to ensure that diversity, equity, and inclusion is “woven through LSC.” We are also encouraged to see that the commitment to staff diversity does not stop at a goal of “hir[ing] and retain[ing]” such a staff, but ensuring that all employees are able to “grow and thrive in their career.” It is in thinking of those principles that we recommend LSC include language about seeking out diversity not just in the staff overall, but at every level of the organization, from entry level positions to senior leadership.

4. REDUCING ADMINISTRATIVE BURDEN SHOULD BE A GREATER PRIORITY IN THE PLAN

NLADA and our members are heartened to see acknowledgements of the administrative burden LSC grantees face in complying with LSC regulations, performance criteria, and fiscal policies. This acknowledgement is an encouraging step, but we would like to see language that goes further and makes a stronger commitment to these principles in the Strategic Plan. For example, Goal 1, Initiative 1 has a final bullet point that states LSC will:

Continue to identify, *and if necessary*, refine and streamline regulatory requirements that may unduly burden grantees. (emphasis added).

In discussing performance standards and metrics in Goal 1, initiative 2, LSC notes that assessments should be “fair,” and that they will “assess grantees’ capacity” to comply with LSC’s performance criteria. Then, in Goal 1, initiative 3, the final bullet point identifies LSC’s intention to:

Assess and analyze opportunities to create efficiencies and streamline oversight processes to lessen current or future burdens on grantees while safeguarding taxpayer dollars.

The inclusion of these items shows LSC’s willingness to reduce administrative burden, which is critical.

Still, NLADA would like to see these principles go further. LSC grantees are subject to what feels like an ever increasing burden to demonstrate, as Goal 1, Initiative 3, puts it, “the highest standards of fiscal responsibility and regulatory compliance.” Promoting high standards of compliance and responsibility is, of course, a necessary priority for LSC. Every dollar that is wasted or mismanaged is a dollar not spent on serving LSC eligible clients. Given that, rigorous oversight and compliance efforts will always be an important part of LSC’s mission.

NLADA asks LSC to think carefully, however, about the other side of the equation. Every dollar or staff hour a grantee spends on demonstrating compliance and adhering to more complicated fiscal policies is also an hour or dollar not spent on serving LSC eligible clients. That is not to advocate for disregarding proper accounting methods, compliance with laws and regulations, or even rigorous best practices. Instead, we urge LSC to, in the Strategic Plan, identify that any additional compliance and fiscal policies should be analyzed with a balanced approach, which weighs how such actions further LSC's critical mission of increasing access to justice and compare that to how it will increase administrative costs of programs.

LSC is not a federal agency and the grantees are not contractors entrusted with federal funds to carry out a discrete task. To the contrary, the grantees, a collection of programs that offer free legal services to the poor in every jurisdiction in the United States, are the mission. Accordingly, we ask that the Strategic Plan identify reducing the administrative burden of grantees as a critical priority unto itself.

5. CONCLUSION

On behalf of NLADA members and staff, we want to thank LSC again for the invitation to comment on the future direction of LSC. We commend you on the tremendous progress over the past four years, and we look forward to working with you on accomplishing many of the important initiatives outlined in the draft 2021–2024 LSC Strategic Plan.

Sincerely,

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National Legal Aid and Defender Association