NLADA
National Legal Aid & Defender Association

<u>Sent by email to:</u> techgrants@lsc.gov

April 21, 2023

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Office of Legal Affairs

> **RE:** **Legal Services Corporation Technology Baselines; Request for Comments** (88 Fed. Reg. 16669 (March 20, 2023))

To the Office of Legal Affairs:

This letter is submitted in response to The Legal Services Corporation (LSC) request for comments to proposed revisions to the Legal Services Corporation Technology Baselines (Tech Baselines). These comments are submitted on behalf of the National Legal Aid & Defender Association (NLADA) and its members.

The proposed revisions generally include sensible suggestions while avoiding overly prescriptive requirements that would increase administrative burdens on already resource strapped offices. Just as a brief example, new sections on remote/hybrid work and sustainability along with new recommended security measures, such as multi-factor authentication, are all sensible suggestions that indicate how the current environment in which legal aid offices practice differs from the one 8 years ago.

The Tech Baselines have traditionally served as a useful support for grantees in their efforts to adapt to an ever-changing technological landscape. They provide guidance without creating new regulatory requirements or rules to be added as additional grant conditions. Considering how rapidly technology evolves and the considerable cost of certain technologies, NLADA has always strongly supported this approach to the Tech Baselines – guidance over conditions and requirements. We are encouraged to see that approach continued here.

There are a few places in the proposed revisions where NLADA has specific suggestions or questions. These are presented below, identified by numbered section when applicable. In addition, we propose a number of minor edits to the text so that it can better align with what NLADA sees as the general approach of the Tech Baselines.

Comments on the Document Generally

As stated above, the Tech Baselines have served the LSC community well, providing important guidance without imposing rigid requirements. In that vein, NLADA recommends that the document avoid using terms like "must" whenever possible. In the draft, the word "must" is in fact used sparingly, only appearing 8 times over 33 pages. Still, the value of the guidance would be retained even if all of those instances were replaced with a word like "should." Such replacements would keep the tone more in line with the spirit of the document and its overall intent.

1. **Overall Program Capacity**

The "Important Considerations and Best Practices" portion of 1.1 Baseline for Overall Program Capacity – Planning mentions the possibility of a technology committee:

> Programs should consider forming a technology committee with representatives from various staff levels and departments (e.g., management, case handlers, intake staff, etc.) to periodically review and assess program-wide use of technology and to help plan future enhancements.

This could be helpful at a number of organizations, and it is rightly framed here as something programs "should consider." At some programs, small staff size, stretched capacity, or other challenges could mean a technology committee would not be feasible, or it could simply not be a prudent use of staff time. There are other sections of the document where a technology committee is discussed as a possibility. At one point, the draft notes that "Technology plans should include measures to increase staff input… such as forming technology committee." But the "Summary of Significant Updates" takes a slightly different tone. There, LSC writes:

> Programs should prioritize staff feedback on technology through the creation of a technology committee and conducting regular staff technology surveys.

NLADA recommends a clarification that programs "should consider" forming a technology committee with an acknowledgement that forming such a committee might be sensible for some programs, but not for others.

5. **(5.4) Advanced Editing for Appellate Brief and Major Litigation**

This represents a new section to the Tech Baselines. Explicit consideration of how technology uniquely impacts this kind of work and the resources attorneys need on larger projects represents an improvement on past versions. Nevertheless, this section would benefit from the acknowledgment of important nuances.

First, at the beginning of this section, it should be made clear that these types of resources should be made available if an office engages in this kind of work. For example, in the section on remote/hybrid work, the baselines recommend grantees have a policy in place "when offering

remote or hybrid options for staff." Most offices do offer such options and should have a policy in place, but no such policy is needed if those options are not offered. This same nuance exists and should be similarly acknowledged in the context of resources for major litigation. Not all programs regularly engage in this kind of work and, accordingly, investing in and maintaining some of these resources may not be a reasonable expenditure.

Second, the guidance in this situation recommends, for example, "staff should have an electronic method to organize discovery." Tools like this can be very useful, but also costly. Some programs are able to make such tools available by co-counseling with private law firms or similar agreements. This is a prudent use of resources in many cases, but especially so when the program only engages in major litigation or comparable projects intermittently. The section should clarify that "access" to tools is the baseline and not necessarily "ownership" of the tool or a program-specific license.

8. Intake and Telephonic Advice

A new addition to this section includes a baseline of "implement a hosted phone system across the entire organization." This caused some confusion among NLADA members. They were uncertain if a "hosted system" was necessarily a VOIP or cloud-based phone system or if it meant something else entirely. Clarification about the term would be helpful.

Beyond clarification, NLADA would also caution against any baseline that suggested a VOIP or cloud-based phone system was a kind of minimum standard or something appropriate for all programs. These phone systems represent significant benefits for many programs, but not all. In places where easy access to broadband internet and/or wireless phone signals make such services available, reliable, and comparatively affordable, these systems can offer a number of advantages. Still, that is not the case in all locations. In some instances, these systems could be more costly and introduce considerable reliability issues. Programs must choose an intake and telephonic advice system that fits not just their preferred features, but also the realities of their geographic area.

12. Training

NLADA and its members agree with LSC on the importance of technology-based training. Given the speed at which technology changes as well as changes in staff comfort levels with technology, NLADA recommends more generalized language like "*regular* technology staff surveys" and "*adequately* trained" as its found in this section opposed to, for example, "provide cybersecurity training with all staff at least annually," which is included in Section 11.7, Baseline for Security – Security Awareness Training. NLADA understands this requirement already exists in LSC's Basic Field Grant Conditions.[1] Nevertheless, these baselines are better served by recommending more general terms. If LSC feels these more specific requirements must be included here, NLADA would recommend citing back to LSC's Basic Field Grant

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[1] *See*, LSC 2023 Grant Terms and Conditions, Condition 8, *available at* https://lsc-live.app.box.com/s/u9b9mp5g0029xhhne06andq2lowfc4o0

Conditions, noting that, currently, LSC grantees are required under their grant conditions to have annual cyber security training. If such a requirement was deemed no longer necessary and removed from the grant conditions, it would be better if the Tech Baselines did not also require an update on that topic.

NLADA's understanding is that the final version of the Tech Baselines will include links to training resources. Those links will serve as an important aid, and NLADA applauds this effort. When LSC desires programs to conduct trainings on particular topics, it is helpful to have specific recommended resources and clear guidelines about the types of trainings that will suffice and the types of trainings that will not. It is especially helpful if LSC is able to identify free trainings or secure national rates for grantees. It is frustrating for programs to seek out trainings on their own, pay for the training, have their staff spend time on the training, and then later be told the training did not meet the appropriate specifications for LSC.

<u>Conclusion</u>
Updating the Tech Baselines helps the LSC grantee community keep up with our fast-paced technological landscape. The opportunities and threats posed by recent technological developments and its usage are significant and multi-faceted. It is imperative that LSC grantees are prepared to take advantage of those opportunities and meet those threats head on. However, with vast differences in size, geographic location, populations served, budget, and even practice areas, it is also imperative that each grantee have the flexibility to do so in their own unique way. LSC's Tech Baselines have always understood this balance, and these revisions appear to continue that tradition. Overall, they offer constructive guidance for programs without rigidity or increased administrative burdens. NLADA is encouraged by this draft and looks forward to a final draft that will almost surely contain some minor changes, but retain the general approach and spirit of this proposed draft.

Sincerely,

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