

MEMORANDUM

To: Charles Keckler, Chair, LSC Operations and Regulations Committee; John Levi, LSC Board Chair;
Jim Sandman

From: Deiedre Weir, Chair, NLADA Civil Policy Group; Don Saunders

Re: Recommendations Regarding Legislative Implementation of Census Changes

Date: July 12, 2011

On May 13 and 14 the NLADA Civil Policy Group (CPG) and Board met and adopted a resolution setting out NLADA's recommendation to the LSC board regarding policies for the reallocation of LSC funding. The resolution recommended that LSC seek appropriation legislation language for FY 2013: 1) that continues to allocate LSC basic field funding on a per poor person basis; 2) that gives LSC 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;" 3) that LSC be required to reallocate funding once every five years; and 4) that LSC be directed to implement the reallocation scheduled for FY 2013 over a period of two years. Below is the background that the CPG and Board considered in making its recommendations.

The current LSC Appropriations Act requires LSC funding to be distributed to each of its grantees on a per poor person basis, based on data obtained from the Decennial Census. In the 2000 Decennial Census, poverty data was determined from personal income information collected by the Census Bureau using the "long form." In 2010 Decennial Census the Census Bureau did not use the "long form" and did not collect data on personal income. Due to these changes in the data sets obtained by the 2010 Decennial Census, LSC funding can no longer be distributed according to the provisions of the current appropriations act that funds LSC.

In lieu of the "long form" the Census Bureau developed the American Community Survey (ACS), a rolling set of yearly surveys that collects income and other kinds of data and provides a timelier picture of poverty and other critical demographic information. The ACS data, or other available data sets, should allow for less radical shifts in LSC funding than those that occur after a ten-year period under the Decennial Census. However, for the 2010 redistribution process, LSC must approach Congress to alter the appropriations legislation given the changes in the Census. The timeline for LSC to provide its recommendations for legislative change for FY 2013 to the Office on Management and Budget (OMB) requires LSC to adopt a new approach and communicate that approach to OMB by September 1, 2011. This will require LSC to adopt a policy prior to September 1.

The Civil Policy Group's Resources Committee conducted a number of conference calls in recent months, hearing from experts on the Census and from officials at LSC charged with developing its policy

approach for the July meeting. Bristow Hardin, the program analyst at LSC exploring options around the funding reallocations, was involved in the discussions and prepared an excellent memo for the CPG and NLADA Board to consider in adopting their recommendations. After discussion and some relatively minor revisions of the Resources Committee's recommendation, the CPG and then the NLADA board adopted the recommendations discussed above.

Hardin provided NLADA with preliminary data showing the changes in relative poverty population of states since the 2000 Decennial Census. This data showed that there were significant changes in the relative poverty population in numerous states, with major gains and major losses, compared to 2000. However, it should be stressed that this data is not the final data that will be used to determine LSC funding, and the changes for any particular state and service area could be significantly larger or smaller than the currently available data would suggest. There are several options that could be used to determine the relevant poverty populations and these options will be considered at a future date. The relevant five-year ACS survey data is not yet available. However, the 2008 ACS survey data that was considered by the CPG and NLADA Board does indicate at least the beginnings of the effects of the recession and provides an indication of impact relevant to the decisions that were made in developing the recommendations.

The Resources Committee decided that NLADA needed to address four essential issues:

- 1) How should NLADA approach the necessary change in the LSC legislation requiring the use of Decennial Census data to distribute LSC funds and how much discretion should LSC have to choose the data on which to base reallocations of grantee funds;
- 2) Should NLADA continue to support a straight per poor person distribution;
- 3) How often should LSC redistribute funding under the data set(s) used for allocation; and
- 4) Should LSC implement the reallocation immediately during FY 2013, or should there be a phase-in to ameliorate the drastic impact in some states/programs.

With regard to the first question, the Committee realized that some important decisions will eventually have to be made regarding which particular data set(s) is best suited to most accurately reflect the poverty population in a county or state, count hard-to-reach populations, and provide other information relevant to funding distribution.

The CPG and NLADA Board considered two approaches in addressing the first question – Should the data set be inserted into the legislation directly, or should LSC be given the discretion that virtually every other federal agency has to determine the “best available data” in allocating funding among its grantees? Given the likely political warfare that might break out in Congress over this issue if a particular data set were to be specified in the statute, the difficulty of discussing such complicated data choices through the legislative process, and, most importantly, our view that LSC is best-placed to make this decision, with input from the Census Bureau,, NLADA decided unanimously to recommend a position giving discretion to LSC to decide which data to use.

On the question of per poor person distribution, the committee felt that this approach represented the fairest, and least politically divisive, method of distribution. Arguments on considering such ancillary issues as the costs of urban/rural delivery, availability of non-LSC funding, or other factors in distributing

funds were seen as unduly complicating the question of fair allocation and each contained significant downsides.

On the frequency of distribution, the CPG and NLADA Board recommended that the legislation provide that LSC reallocate funding every five years. Though this position was not agreed to by all involved in the deliberations, the majority felt that shorter periods were seen as being administratively burdensome and too disruptive for grantees. Going beyond five years would obviate the advantages of more frequent reallocations to avoid the huge swings that have typically resulted from decennial redistributions.

Finally, the CPG and NLADA Board looked at whether LSC should immediately implement the entire reallocation in FY 2013. Given that the potential range of gains and losses were so pronounced, the recommendation was made that the reallocation be phased in over FY 2013 and FY 2014, for this redistribution only. This would allow programs to have time to gear up both the hiring and retrenchment processes that will necessarily flow from such funding shifts.

We appreciate your consideration of this memorandum and look forward to your discussions in Seattle and beyond.