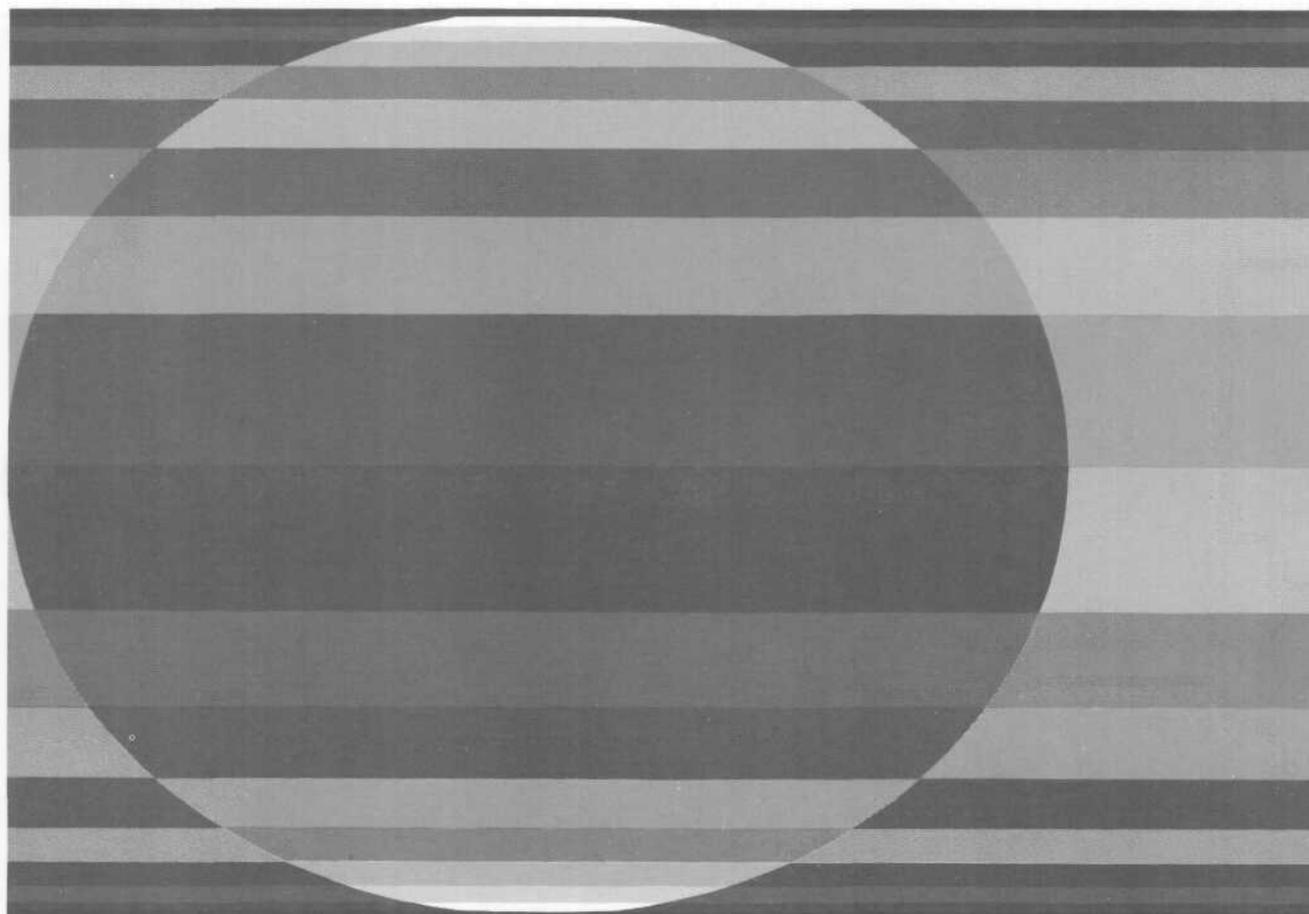


BACKGROUND PAPER

The Legal Services Corporation— Budgetary Issues and Alternative Federal Approaches

July 1977



Congress of the United States
Congressional Budget Office
Washington, D.C.

**THE LEGAL SERVICES CORPORATION--
BUDGETARY ISSUES AND ALTERNATIVE FEDERAL APPROACHES**

**The Congress of the United States
Congressional Budget Office**

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PREFACE

This analysis of alternative budgetary levels for the Legal Services Corporation was undertaken at the request of the Senate Budget Committee. Its purpose is to provide the Congress with a basis for assessing future resource requirements of the legal services program in light of such key programmatic considerations as the number of persons to be served and the level of legal services to be provided. In accordance with the Congressional Budget Office's mandate to provide objective and nonpartisan information, this report contains no recommendations.

Estimates of the numbers of persons to be served are based on a model used for CBO Background Paper No. 17, Poverty Status of Families Under Alternative Definitions of Income (revised edition, June 1977).

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July 1977

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SUMMARY

The present authorization for the federal assistance program administered by the Legal Services Corporation is due to expire at the end of fiscal year 1977. The corporation has requested an appropriation of \$217 million for fiscal year 1978 and has projected it will require \$275 million the following year. The President's budget proposed \$175 million for the program, an estimate not binding on the corporation since it is independent of the Executive Branch.

Through the Legal Services Corporation, the federal government currently spends about \$125 million a year to finance legal aid in noncriminal cases to approximately 13 million poor people. The assistance is provided in the form of federal grants to about 300 local programs employing a total of some 3,000 staff attorneys and 1,100 paralegal personnel. To provide a basis for assessing the future resource requirements and direction of the legal services program, this paper analyzes:

- o The current program and its costs, and key management issues;
- o Projections of the potential legal services population;
- o Alternative funding levels based on differences in the number of poor people and levels of legal service to be provided; and
- o Some basic departures from the present approach.

The quality of legal services actually delivered is not discussed. While quality of service delivered is a significant aspect of any comprehensive evaluation of program effectiveness, it does not come within the purview of this paper.

The Legal Services Corporation places its estimate of the number of persons in need of free legal service at 29 million; this figure reflects the number of people below the poverty level. According to the corporation, 16 million are now denied legal aid because they live outside areas served by legal service programs or because existing resources limit the services available through ongoing programs. The corporation maintains that the \$217 million it has requested for fiscal year 1978, and an estimated \$275 million for fiscal year 1979, would enable it to extend coverage to all the estimated 29 million people. If these funding levels were provided and the program remained unchanged in other respects, the projected appropriation requirement for fiscal year 1982 would be \$323 million.

THE PROGRAMMATIC BASIS FOR ALTERNATIVE FUNDING LEVELS

Two programmatic elements are key to a consideration of future funding levels for the Legal Services Corporation: the number of persons to be served and the level of legal services to be provided. Attorneys' salaries and associated costs, and the availability of other sources of program support, are other factors to take into account.

The key program management problems usually ascribed to the legal services program include low salaries for attorneys and high staff turnover. Average annual salaries for legal aid attorneys are about \$13,900, a level of compensation generally lower than that paid by federal agencies and state and local governments to staff lawyers.

The Legal Services Corporation Act of 1974 defines an eligible client as "any person financially unable to afford legal assistance" and establishes priority for "persons least able to afford legal assistance". These provisions allow wide latitude for setting eligibility standards; they could include persons whose incomes are above the poverty level established by the Office of Management and Budget (OMB).

The Congressional Budget Office has projected the number of persons to be served using three eligibility standards and three definitions of income in order to illustrate the sensitivity of the number of poor to these criteria. The projections were made for fiscal year 1982 because it will be difficult to build up legal services coverage to serve the total target population much before that date. The eligibility standards include:

- o 100 percent of the poverty level;
- o Average eligibility under the present program (106 percent of the poverty level); and
- o Maximum eligibility under present Legal Services Corporation regulations (125 percent of the poverty level).

The income definitions include:

- o The Legal Services Corporation income guidelines, which exclude cash income from governmental income-maintenance programs such as public assistance, supplemental security income, and unemployment compensation;
- o The OMB income definition, which considers all the cash or money income a family receives before taxes; and
- o An income definition that considers all cash or money income and in-kind benefits (such as food stamps and public housing assistance, but excluding medicare and medicaid).

The CBO projections are based on current census data, demographic changes, and optimistic economic assumptions about the gross national product and unemployment rates (i.e. a real growth in GNP of 3.5 percent and unemployment rate of 4.5 percent for fiscal year 1982). The estimated number of poor people would be greater under projections of lower economic growth. The CBO projections are national estimates that do not attempt to reflect any specific geographic distribution. Such allocations would be an aspect of the operating program procedures.

The range of differences between the three income definitions is significant. At or below the poverty level, the number of poor people in 1982 would be 24.9 million under the Legal Services income guidelines, 20.5 million under the OMB income guidelines, and 15.9 million under the OMB guidelines adjusted for in-kind benefits--a range of 9 million people. At the current average local eligibility standard (106 percent of the poverty level), the numbers of poor in 1982 would be 26.6 million, 22.5 million, and 18.5 million, respectively--a range of 8.1 million people. At the corporation's maximum eligibility limit (125 percent of the poverty level), the numbers of poor in 1982 would be 30.9 million, 27.4 million, and 24.5 million, respectively--a range of 6.4 million people. The concept and methodology involved in including in-kind transfers as a part of income are, of course, complex and controversial.

Access to legal services is now based on a ratio of two attorneys per 10,000 poor persons. By most comparisons, this ratio appears to offer the poor sparse legal coverage. The corporation's long-term goal is to change the ratio to 4:10,000.

ALTERNATIVE FUNDING LEVELS

The Legal Services Corporation has projected its appropriation requirements to extend coverage from 13 million to its 1969-based estimated target population of 29 million poor people in two fiscal years--that is, by the end of fiscal year 1979. CBO estimates of the population to be served are lower and are based on calculations for fiscal year 1982. All estimates are based on the OMB income definition--a mid-course between the Legal Services Corporation eligibility guidelines and the OMB definition adjusted for in-kind benefits. The OMB definition used as an analytical device permits a quantifiable comparison; it is not intended to impute any value to any one criterion.

All costs in the alternatives outlined below allow for associated increases in administrative and support activities; they are expressed in 1977 dollars. Funding for research, evaluation, and demonstration projects is continued at the 1977 level.

Option 1: The President's Budget Recommendation
(Appropriation of \$175 million)

The \$175 million estimate included in the President's budget for fiscal year 1978 represents an increase of \$50 million over current funding. This level would permit expansion of program coverage from 13 million to 19.4 million people under the existing service ratio of two attorneys per 10,000 poor persons.

Option 2: Eligibility Increased to 125 Percent of
the Poverty Level (Appropriation of \$238 million)

This option would permit all local plans to set eligibility at the current Legal Services Corporation maximum under the OMB income definition by fiscal year 1982. At this level, the program's coverage would be extended to 27.4 million people under the existing service ratio of two attorneys per 10,000 poor people. The estimated full-year federal cost would be \$238 million.

Option 3: Level of Services Available Raised,
Stricter Eligibility Requirements Imposed (Appropriation of \$344 million)

This alternative provides for an increase in the level of services available from an equivalent of two to four attorneys per 10,000 persons; it also restricts eligibility to the 20.5 million persons estimated in 1982 to have family incomes below the poverty level. This alternative illustrates the significant cost entailed in increasing the level of services, even though there would be a substantial reduction in the number of people covered. The estimated full-year federal cost would be \$344 million.

BASIC DEPARTURES FROM THE CURRENT PROGRAM

The corporation is required to report to the President and the Congress on alternative methods of delivery that could supplement or replace the

existing program. The various alternatives being considered as a result of 19 demonstration projects could result in some revisions to the current program. Overall programmatic and financial responsibility, however, would remain with the federal government as a separate categorical grant program.

A fundamental departure from the present or modified categorical approach would rely on local initiative and discretion in providing legal assistance to the poor. It would emphasize pro bono, or donated, services by members of the bar and prepaid legal services programs in addition to indirect federal assistance from programs such as General Revenue Sharing and Title XX (Social Services) of the Social Security Act.

CHAPTER I. BACKGROUND IN BRIEF OF THE LEGAL SERVICES CORPORATION

At present, the federal government spends about \$125 million a year directly to provide about 13 million poor persons with minimum legal assistance in non-criminal matters. For the most part, this service is delivered by some 3,000 attorneys and 1,100 paralegal aides in nearly 300 local legal assistance programs. 1/ These local programs are funded predominantly by federal grants administered by the Legal Services Corporation, a private, nonprofit corporation created in 1974.

In 1976, programs funded by the corporation handled an estimated 1.25 million cases, dealing mainly with such routine matters as family relations, consumer affairs, housing, and administrative law. Only about 15 percent of the cases resulted in court litigation.

The present authorization for federal assistance is due to expire at the end of fiscal year 1977. Anticipating reauthorization by the Congress, the corporation has requested an appropriation of \$217 million for fiscal year 1978--an amount larger by \$42 million than the \$175 million included in the President's budget. 2/ (This estimate is not binding, however, since the corporation is independent of the Executive Branch.)

The history of the legal aid movement in the United States dates back to the nineteenth century. Until the mid-1960s, however, free legal assistance to the poor was limited primarily to the services of Legal Aid Societies, which were often formed and supported by the

1/ Of the estimated 1,100 paralegal employees in legal assistance programs, about 500 are supported by funds from the Legal Services Corporation.

2/ The Ford Administration's fiscal year 1978 estimate of \$90 million was amended by President Carter to \$175 million.

organized bar. In the 1960s the Ford Foundation supported various demonstration projects intended to provide what was termed "a more comprehensive approach" than that offered by the traditional legal aid movement. 3/

Federal funding for legal assistance had its genesis in the now-defunct Office of Economic Opportunity (OEO), which began to support local projects in 1966. 4/ OEO funding earmarked for legal services increased from \$35.8 million in fiscal year 1969 to \$50.8 million the following year. Over the next five years, funding peaked in fiscal year 1973 at \$74.6 million; it declined to \$71.5 million in 1975 when administration of the program was taken over by the successor agency to OEO, the Community Services Administration.

During the period between 1966 and 1975, the legal services program faced severe resource and management problems. Ultimately, these difficulties resulted in funding disparities among local projects, inadequate coverage for the entire eligible population in an approved project area, short-funding of projects for less than a full year, and for many areas, no coverage at all. Efforts that ranged from terminating altogether to establishing a legal services corporation kept the future of the program uncertain. Although the Legal Services Corporation Act was approved on July 25, 1974, the corporation did not become operational until October 1975 because of delay in appointing its Board of Directors.

The corporation was established to fund legal assistance to persons unable to afford such aid. 5/ Its mandate permits wide latitude in determining what

3/ Leonard H. Goodman, and Margaret H. Walker. The Legal Services Program: Resource Distribution and the Low Income Population, Bureau of Social Science Research Inc., Washington, D.C., July 1975, pp. 1-10.

4/ Ibid.

5/ Public Law 93-355, July 25, 1974 (42 U.S.C. 2996b).

level of federal support should be provided. The major points of judgment are the income level at which a person should be eligible for free legal aid and the level of access to or availability of such help. These determinations--or planning assumptions--are based on program judgments and available resources.

The 1974 act authorized funding for three years--\$90 million for fiscal year 1975 (appropriated to the Community Services Administration), \$100 million for fiscal year 1976, and "such sums as necessary" for fiscal year 1977. Within the specified authorizations, lesser amounts actually have been appropriated--\$71.5 million in 1975 and \$92.3 million in 1976. For fiscal year 1977, \$125 million was appropriated.

In order to provide a basis for assessing the future resource requirements and direction of the legal services program, this paper focuses on an analysis of:

- o The current program and its costs, and key management issues; 6/
- o Projections of the potential legal services population;
- o Alternative funding levels based on differences in the number of poor people and levels of legal service to be provided; and
- o Some basic departures from the present approach.

In assessing the legal services program, an important distinction should be remembered: the program is limited by statute to noncriminal matters.

6/ The quality of legal services actually delivered is not discussed in this report. While quality of output is a significant aspect of any comprehensive evaluation of program effectiveness, it is not within the purview of the analysis in this paper.

In general, however, the Constitution does require that indigent criminal defendants be provided counsel at public expense, and the states use a variety of mechanisms to meet the constitutional responsibility.

CHAPTER II. THE CURRENT PROGRAM--ITS COSTS AND
MANAGEMENT ISSUES

THE PROGRAM'S COSTS NOW AND FIVE YEARS AHEAD

In fiscal year 1977, the Legal Services Corporation (LSC) will spend an estimated \$129.4 million, of which \$125 million is to come from new federal appropriations and the remainder from prior-year funds. The program will provide some 13 million poor persons with minimum access to free legal service--defined as the equivalent of two attorneys per 10,000 poor persons. LSC assumptions indicate, however, that 16 million of the poor will be denied access to legal aid, either because they live outside areas served by legal service programs or because existing resources limit the services available in established projects. (Estimates made by the Congressional Budget Office of the poverty population, discussed in Chapter III, are lower.)

About 85 percent of the current \$129.4 million program is for grants to local legal aid projects 1/ and contracts for 13 support centers that provide specialized legal services to the local programs. The \$18.9 million balance is for fellowships for law school graduates who serve in local programs, for central administration and operation of regional offices, and for research, evaluation, and demonstration projects. Table 1 presents a categorical breakdown of the distribution of LSC funds.

1/ See Appendix for distribution of LSC grants by state.

TABLE 1. ESTIMATED DISTRIBUTION OF LEGAL SERVICES CORPORATION FUNDS

	Dollars in Millions	Percent
Grants to Local Programs	106.2	82.1
Contracts to Support Centers	4.3	3.3
Subtotal	(110.5)	(85.4)
Internships	4.4	3.4
Administration and Support, Including Regional Offices	8.5	6.6
Research, Evaluation, and Demonstration Projects	6.0	4.6
Total	129.4	100.0

SOURCE: Legal Services Corporation Budget for Fiscal Year 1978, Appendix C, pp. C1-C17

The current plans of the Legal Services Corporation call for extending minimum access to legal services to the remaining 16 million poor persons (according to LSC's estimate) over the next two fiscal years. To this end, the corporation has estimated appropriation requirements of \$217 million in fiscal year 1978 that would provide assistance for an additional 10.6 million poor persons. The estimated \$275 million needed for fiscal year 1979 would provide minimum assistance for the remaining 5.4 million and strengthen administration and support services. ^{2/} If these amounts were appropriated and

^{2/} The 1979 appropriation estimate provided by LSC includes costs for field services and other activities. These estimates could be smaller if different assumptions on cost and the number of poor persons currently in the population were used.

the ratio of two attorneys per 10,000 poor remained unchanged, funding would level off in fiscal year 1980 and subsequent years, except for periodic adjustments for inflation. Allowing for inflation after fiscal year 1979 would place the LSC estimates at \$333 million for fiscal year 1982 (see Table 2).

TABLE 2. FIVE-YEAR COST PROJECTIONS FOR LEGAL SERVICES PROGRAM UNDER CURRENT AGENCY PLANNING: BY FISCAL YEARS, IN MILLIONS OF DOLLARS

	1977	1978	1979	1980	1981	1982
Appropriation	125.0	217.1	275.5	290.4	305.7	322.6
Interest Income from Prior Year	--	4.5	7.6	9.7	10.2	10.7
Other Resources	4.4	--	--	--	--	--
Total Program Level	129.4	221.6	283.4	300.1	315.9	333.3
Number of Poor Persons Provided Minimum Assistance	13.0	23.6	29.0	29.0	29.0	29.0
Number of Poor Persons Without Minimum Assistance	16.0	5.4	--	--	--	--

SOURCE: Estimates for fiscal years 1977 through 1979 were provided by the Legal Services Corporation.

MANAGEMENT ISSUES

The decentralized nature of the legal services program permits considerable latitude in the design and operation of the nearly 300 individual projects. Nevertheless, these local programs experience certain common management problems.

Although there are wide variations in size, a typical--although hypothetical--program would have 15 attorneys and would receive about \$370 thousand from the Legal Services Corporation. In 1976, the average legal services attorney handled somewhere between 360 and 415 cases over the year. The local staff attorneys are assisted by paralegal employees at an average of about one paralegal employee to three attorneys. These employees assist in various activities such as interviewing prospective clients, doing legal research, and undertaking case investigations and followup.

Most legal aid programs face problems of relatively low salaries and high turnover. Also, eligibility requirements vary considerably among different parts of the country. Together, these factors make it difficult to draw any conclusions about program effectiveness from a national perspective.

Salaries

Salaries for LSC-funded attorneys generally are not sufficient to interest experienced lawyers in long-term careers in legal assistance to the poor. Legal positions in other public service areas offer a relevant basis for comparison. Average annual salaries for staff attorneys start at about \$12,000 and average roughly \$13,900. These levels are generally lower than those paid by federal agencies and state and local governments. The average LSC entry level salary of \$12,000 compares poorly to \$17,000 for new lawyers hired by the Internal Revenue Service and \$14,000 by the General Accounting Office.

Labor unions also offer a basis for comparison. For example, average salaries for staff attorneys in

AFL-CIO-run programs in Massachusetts are \$15,000 and \$21,500 for Washington, D.C. In New York City, the prepaid legal plan for members of the State, County, and Municipal Employees Union offers a starting salary of \$15,000.

Turnover

An analysis prepared in 1976 by the Legal Services Corporation found a turnover rate of 33 percent among attorneys supported by LSC grants. While this rate is high, the local programs have nevertheless been able to build a corps of experienced attorneys. A survey conducted in June 1976 indicated that about one-third of all legal service attorneys had more than two but less than five years of experience. As shown in Table 3, nearly 14 percent had five years' experience in legal services and less than 2 percent had six months or less.

TABLE 3. LENGTH OF EXPERIENCE OF LEGAL SERVICES ATTORNEYS: AS OF JUNE 1976

Years With Local Program	Percent
Less than 6 Months	1.6
6 Months to 1 Year	21.8
1 Year to 2 Years	25.8
2 Years to 5 Years	33.9
More than 5 Years	13.9
TOTAL	100.0

SOURCE: Legal Services Corporation.

Eligibility Requirements

The Legal Services Corporation Act of 1974 defines an eligible client as "any person financially unable to afford legal assistance" and establishes priority for "persons least able to afford legal

assistance". These provisions offer wide latitude for setting eligibility standards; clients can include persons whose incomes are above the poverty level established by the Office of Management and Budget.

Within the regulations established by the Legal Services Corporation, each local program sets its own eligibility requirements. The income-related criteria are often expressed as a percent of the poverty level established by the Office of Management and Budget (OMB). These guidelines indicate, by family size and other factors, the level of a family's cash income that determines poverty.

The corporation's regulations set the maximum income at 125 percent of the poverty level; they also allow various family and financial circumstances other than income to be considered. In addition, the regulations permit income from public assistance, supplemental security income, unemployment compensation, or other governmental income maintenance programs to be disregarded if the individual would otherwise be eligible. Thus LSC guidelines, in effect, differ from the OMB definition of income, which includes all cash or money income before taxes--including interest, social security, pensions, unemployment compensation, and public assistance. The corporation believes that the maximum of 125 percent of the poverty level is a stringent standard, and that it gives priority to those individuals least able to obtain legal assistance while still excluding a large number of persons unable to afford adequate legal counsel. As a practical matter, the corporation's funding estimates assume that overall eligibility nationwide would average 100 percent of the OMB poverty level. Without resource constraints, different eligibility standards could be considered.

The average eligibility now in effect at the local level is estimated to be 106 percent of the poverty level. Within this average, there is wide variation--from 71 percent for Shreveport, Louisiana, to 152 percent for Newark, New Jersey. About a third of the local program plans have eligibility requirements of 100 percent or less of the poverty level, and 60

percent are between 101 percent and 125 percent of the eligibility requirements (see Table 4). 3/

TABLE 4. ESTIMATED DISTRIBUTION OF LOCAL PLANS BY ELIGIBILITY REQUIREMENTS: AS OF MARCH 1977

Range of Income Eligibility		Percent of Plans (Weighted to Reflect Relative Size)
As Percent of OMB Poverty Level	Income in Dollars for a Non-farm Family of Four <u>a/</u>	
80 or Less	4,539 or Less	7.5
81 to 100 <u>b/</u>	4,540 - 5,674	29.0
101 to 125 <u>b/</u>	5,675 - 7,092	60.2
126 to 135	7,093 - 7,660	.3
136 and Over	7,661 and Over	3.0
Total		<u>100.0</u>

a/ Computed for fiscal year 1976 from weighted average poverty threshold for a non-farm family of four headed by a male. See Poverty Status of Families Under Alternative Definitions of Income, CBO Background Paper No. 17, revised edition, June 1977, Table A-3, p. 23.

b/ Of all local plans (weighted to reflect relative size), 9.9 percent are at 100 percent of the poverty level and 8.5 percent are at the 125 percent maximum established by the Legal Services Corporation.

3/ Estimated by CBO on the basis of a March 1977 sample of 60 local programs, which cover 23.9 percent of LSC grant funding for fiscal year 1977. Four programs in the LSC sample have eligibility standards in excess of 125 percent of OMB guidelines. These standards were in effect before the LSC regulations were set and are currently under review. Completion of a field survey underway by the General Accounting Office should provide a more definitive basis for estimating income eligibility.

CHAPTER III. THE NUMBER OF POOR PEOPLE AND LEVELS OF LEGAL SERVICE

Two elements are key to any consideration of future funding levels for the Legal Services Corporation: the number of poor persons to be served and the level of legal services to be provided. Other factors that have to be weighed include attorneys' salaries and associated costs and the availability of other sources of program support.

PROJECTING THE POTENTIAL LEGAL SERVICES POPULATION

A key planning assumption on which the Legal Services Corporation bases its requirements is its estimate of the number of poor people. The definition of income currently used by OMB to determine poverty includes cash or money income from virtually all sources but excludes in-kind benefits such as those from food stamps, child nutrition programs, housing assistance, medicare and medicaid. There is fundamental disagreement over whether in-kind payments should be counted.

The corporation and other authorities take the position that in-kind benefits have little direct bearing on the standard it believes the Congress has imposed in the Legal Services Corporation Act: whether an individual or group of individuals has the ability to afford legal assistance. The policy aspects of this question are not within the purview of this paper. But future implications of including in-kind payments as income in defining poverty would be significant. Even excluding medicare and medicaid, inclusion of other in-kind benefits would substantially lower the number of poor.

The Legal Services Corporation assumes that there are about 29 million persons below the poverty level (in the United States, Puerto Rico, and Trust Territories), basing this estimate on 1969 U.S. Census data. The definition of income used by the Bureau of the Census is similar to that used by OMB in that it includes cash

or money income from virtually all sources. In-kind benefits are not considered as income in determining poverty. The corporation adheres to the 29 million figure because it believes resource limitations preclude broader eligibility standards and because the 1969 data provides the degree of detail (i.e. of a census tract) used in allocating LSC grants.

From an administrative standpoint there may be great advantage in using 1969 census data for allocating grants. But for purposes of projecting future resource requirements on a national basis, the 29 million number does not reflect the most recent census data, nor is it free of bias built in the census data base concerning under-reporting and non-reporting of income by persons surveyed. 1/

Census data for calendar year 1975 (expanded to include persons residing in the territories) place the number of poor at 27.6 million. 2/ Even this figure should be revised further to remove biases from the census data base for under-reporting and non-reporting of certain income by persons surveyed and to reflect estimated changes in economic and demographic characteristics. 3/

1/ See Poverty Status of Families Under Alternative Definitions of Income, CBO Background Paper No. 17, revised edition, June 1977, pp. 6-7 and Part II Appendix "Estimating Poverty Population", pp. 17-20.

2/ Calculated by CBO, based on U.S. Department of Commerce, Bureau of the Census, Current Population Reports, (Series P-60, No. 103), Money Income and Poverty Status of Families and Persons in the United States: 1974 and 1975 Revisions, Issued September 1976, Table 17, p. 34.

3/ Estimates of numbers of poor persons based on CBO model used for Poverty Status of Families Under Alternative Definitions of Income, op. cit.

PROJECTING POPULATION ACCORDING TO DIFFERENT CRITERIA

The OMB poverty level offers a convenient benchmark for comparing various alternatives concerning the number of persons to be provided free legal assistance. It is used by the corporation in its regulations on eligibility standards.

Decisions on the number of persons to be served depend on two factors: eligibility standards and the definition of income. Projections under three eligibility standards and three definitions of income were prepared for this report to illustrate the sensitivity of the number of poor people to these two factors. The eligibility standards used are: 100 percent of the OMB poverty level, average eligibility under the present program (106 percent of the poverty level), and maximum eligibility under present LSC regulations (125 percent of the poverty level). The income definitions include:

- o The Legal Services Corporation income guidelines, which exclude cash income from governmental income maintenance programs such as public assistance, supplemental security income, and unemployment compensation;
- o The OMB income definition, which considers all the cash or money income a family receives before taxes; and
- o An income definition that considers all cash or money income and in-kind benefits (such as food stamps and public housing assistance, but excluding medicare and medicaid).

The CBO projections (see Table 5) are based on current census data, changes in demographic characteristics, and optimistic economic assumptions concerning the gross national product and unemployment. 4/ The

4/ The econometric model used in the development of these projections assumed a real growth in GNP of 3.5 percent and an unemployment rate of 4.5 percent for fiscal year 1982.

estimated number of poor would be greater under projections of lower economic growth. The CBO projections are national estimates; they do not attempt to reflect any specific geographic distribution. Such allocations would be an aspect of the operating program procedures.

TABLE 5. PROJECTING THE NUMBER OF POOR: BY FISCAL YEARS: NUMBERS IN MILLIONS

Year	Legal Services Income Guidelines	OMB Income Guidelines	OMB Guidelines Adjusted for In-Kind Transfers
<u>At 100 percent of the poverty level</u>			
1976	30.3	23.5	17.8
1978	26.5	21.6	16.8
1982	24.9	20.5	15.9

<u>At the average local eligibility level--106 percent of the poverty level</u>			
1976	32.3	26.2	21.2
1978	28.3	23.7	19.6
1982	26.6	22.5	18.5

<u>At the LSC maximum level--125 percent of the poverty level</u>			
1976	38.4	32.8	29.8
1978	33.6	29.6	26.6
1982	30.9	27.4	24.5

There is a significant range of differences between the LSC's income definition, the OMB income definition, and the OMB definition adjusted for in-kind transfers. The differences in the estimated number of poor people in fiscal year 1982 are

9 million at or below the poverty level, 8.1 million at the LSC average eligibility at the local level, and 6.4 million people at the corporation's maximum income eligibility level. (It should be noted, of course, that the concept and methodology involved in including in-kind transfers as a part of income are complex and controversial.)

THE LEVEL OF LEGAL SERVICES AVAILABLE

The Legal Services Corporation's current plans are to achieve a ratio of two attorneys to every 10,000 poor people; this matches the level of access in the region with the best ratio when the corporation was created. ^{5/} This ratio was recognized by LSC as providing a minimum level of access consistent with limited resources and the availability of other sources of support such as donated attorney services. The corporation's long-range goal, however, is to double this ratio to four attorneys per 10,000 poor. ^{6/}

By most comparisons, the 2:10,000 ratio appears to provide the poor with sparse coverage. On a national basis, there are an estimated 14 attorneys in private practice per 10,000 persons (excluding attorneys employed by industry, government, and educational institutions). One study has estimated a requirement of 4.6 attorneys per 10,000 based on the legal needs of the poor; this study assumed the legal needs of the poor to be less than those of the general population owing to the high proportion of

^{5/} In fiscal year 1974, LSC's Region I (Boston) had 1.99 LSC-funded attorneys per 10,000 poor persons compared to an average of 0.76 per 10,000 for all LSC regions. Leonard H. Goodman and Margaret H. Walker, The Legal Services Program: Resource Distribution and the Low Income Population, Bureau of Social Science Research, Inc., July 1975, Table 1, p. 20.

^{6/} Legal Services Corporation Annual Report 1976, p. 14 (note) and p. 27.

poor persons under 18 years of age. 7/ There are arguments to the contrary--that the legal needs of the poor are greater; they contend that the law affects the poor more often because of crisis situations that often involve children and dependence on public benefit programs.

OTHER COST AND SUPPORT FACTORS

Under current LSC planning, an estimated annual cost of \$7.82 is needed for each additional person provided legal coverage on the basis of two attorneys per 10,000 persons. This estimate of unit costs includes \$7.39 for staff attorneys and related expenses, 5¢ for support centers, and 38¢ for central overhead. 8/

The corporation indicates that the availability of other sources of support was taken into account in setting the minimum ratio at 2:10,000. Thus, resources for the minimum level are assumed to come entirely from federal grants from the corporation with other sources of support serving as essential supplements to the minimum program. Such supplementary support

7/ Calculated by CBO, based on Leonard H. Goodman and Margaret H. Walker, Bureau of Social Science Research, Inc., The Legal Services Program: Resource Distribution and the Low Income Population, July 1975, p. 21 (note 13) and p. 63. (The ratio of 4.6 attorneys per 10,000 persons assumed an annual average attorney caseload of 500.)

8/ Calculated by CBO from data in Legal Services Corporation Budget Request for Fiscal Year 1978, Appendix C, pp. C-6 through C-17. Estimates do not include increases for fellowships, travel, research, demonstration projects, and program evaluation. These activities are assumed to continue at the fiscal year 1977 level.

is considered vital by LSC in making up for program deficiencies, augmenting minimum levels of service, and providing assistance to special groups.

Significant support for legal assistance is available from sources other than LSC grants: other resources of the corporation itself (i.e. earnings from prior-year interest and attorneys paid by LSC fellowships); other existing federal grant programs; nonfederal funds from foundations, charitable organizations, and state and local governments; and pro bono or donated services. Such supplementary support may be provided both to LSC funded projects and to legal assistance programs that are entirely independent of the corporation. The nationwide extent and net impact of these other resources are still not known. (Completion of a forthcoming comprehensive field survey by the General Accounting Office should provide a basis for developing reasonable estimates.)

CHAPTER IV. ALTERNATIVE APPROACHES AND WHAT THEY COULD
MEAN FOR THE PROGRAM

BASIS OF THE ANALYSIS

For an analysis of alternative funding levels, the projections used in this chapter cover the five-year period fiscal years 1977-1982. The three options presented here would extend legal services to various numbers of poor people under different levels of service. The numbers of persons covered reflect changes in eligibility under the definition of income in the OMB poverty guidelines--a mid-course between the Legal Services Corporation definition and the OMB income definition adjusted for in-kind transfers. The OMB guidelines serve as a basis for developing funding levels because they represent a common and widely understood denominator. This analytical device permits a quantifiable comparison; it is not intended to impute particular value to any one criterion. Each option identifies the number of poor persons covered in fiscal year 1982. 1/

All costs allow for associated increases in administrative and support activities and are expressed in 1977 constant dollars. They do not provide for significant increases in attorney salaries. It is assumed that funding for research, evaluation, and demonstration projects would continue at the 1977 level.

VARIATIONS OF THE CURRENT PROGRAM

The alternative funding levels described below are based on variations in the number of poor persons

1/ Each of the options except the first (the President's budget) reaches this numerical level of coverage by the end of fiscal year 1979. For the higher options, so rapid a buildup may be unrealistic.

to be served and the level of legal services available. Each option is a modified version of the current program. Some different approaches are reviewed later in this chapter.

Option 1: The President's Budget Recommendation (\$175 Million Appropriation)

The \$175 million estimate included in the President's budget for fiscal year 1978 represents an increase of \$50 million over current funding. This level would expand program coverage from 13 million poor persons to 19.4 million continuing the existing 2:10,000 service ratio.

Option 2: Eligibility Increased to 125 Percent of the Poverty Level (\$238 Million Appropriation)

An appropriation of \$238 million (in 1977 dollars) would permit all local plans to set eligibility at the current LSC maximum under the OMB income definition by fiscal year 1982. At this level, the program's coverage would be extended to 27.4 million people continuing the existing service ratio.

Option 3: Level of Services Available Raised. Stricter Eligibility Requirements Imposed (\$344 Million Appropriation)

For an appropriation of \$344 million to provide for raising the level of services available from an equivalent of two to four attorneys per 10,000 persons, eligibility would be restricted to persons with family incomes at or below the poverty level. This option illustrates the significant cost entailed in raising the level of services, despite a substantial reduction in the number of persons covered. At this level, the program's services would be extended to 20.5 million people, the estimated number of poor people at 100 percent of the poverty level projected for fiscal year 1982.

Table 6 summarizes the effects of these three options.

TABLE 6. EFFECTS OF ALTERNATIVE PROGRAM FUNDING LEVELS

	Number of Attorneys Per 10,000 Poor Persons	Millions of People Covered	Federal Funding Level (Millions of 1977 Dollars)
Option 1: President's Budget	2	19.4	175
Option 2: Eligibility Increased to 125 Percent of OMB Poverty Level (No change in level of service)	2	27.4	238
Option 3: Level of Service Raised, Stricter Eligibility Standard Imposed (100 Percent of OMB Poverty Level)	4	20.5	344

BASIC DEPARTURES

Under each of the alternative funding levels, programmatic and financial responsibility would remain with the federal government as a separate, so-called "categorical" grant program administered by the Legal Services Corporation. A fundamental departure from the categorical approach can also be considered. This approach would rely on local initiative and discretion in providing legal assistance to the poor with indirect assistance from the federal government.

A local initiative approach would have considerable potential resources to draw upon. The principal sources of support are in three areas: indirect federal assistance, donated lawyers' services, and growth in prepaid and group legal service programs.

Indirect Federal Assistance

In fiscal year 1978, three federal programs will provide an estimated \$9.5 billion to state and local governments to spend for projects that could include legal assistance to the poor. These three federal programs are

General Revenue Sharing	\$6.9 billion
Social Services under Title XX of the Social Security Act	\$2.4 billion
Community Services under the Older Americans Act	<u>\$0.2 billion</u>
TOTAL	\$9.5

Grants under Title XX of the Social Security Act and the Older Americans Act generally cover 75 percent of project costs, with the balance coming from state and local matching funds. (Other federal programs with funds that can be used for legal assistance include the Community Development Act of 1974, Volunteers in Service to America, and the Comprehensive Employment Training Act.) In all state allocations--particularly for Title XX funds--state officials have considerable discretion about what kind of social services to provide and how legal or other assistance may be delivered. The particular mechanism for state and local decision-making varies widely from state to state. This year, an estimated \$33 million in federal and state Title XX funds will be expressly designated for free legal aid to low-income persons. 2/

2/ U.S. Department of Health, Education, and Welfare, Technical Notes: Summaries and Characteristics of States' Title XX Social Services Plans for Fiscal Year 1977, March 1, 1977, p. vi.

Nonfederal Resources

In local legal aid projects funded by LSC, a significant number of attorneys and paralegal employees are funded by other sources. A survey of Legal Services Corporation projects in six large cities indicated 25 percent of the attorneys and 36 percent of the paralegals were funded by sources other than LSC grants. 3/ An estimated 400 local legal aid programs are independent of LSC support and provide assistance ranging from referral to full-scale legal counsel. 4/

Donated Services

Legal assistance provided by attorneys free of charge to poor clients is another significant resource available in the local initiative approach.

The American Bar Association's Code of Professional Responsibility (Canon 2) sets forth the basic obligation for making counsel available to persons unable to pay. The bar is currently considering how this responsibility can best be carried out. Some observers have suggested that lawyers donate services or equivalent financial contributions ranging from 5 to 15 percent of total client-related time. 5/

3/ The six cities are Atlanta, Chicago, Dallas, the District of Columbia, Los Angeles, and New York; data were provided by LSC. Results of this survey are generally consistent with a 1974 nationwide analysis prepared by Goodman and Walker, op. cit., pp. 74-83.

4/ Tentative estimate from the General Accounting Office based on a preliminary review of data supplied by the National Legal Aid and Defenders Association.

5/ American Bar Association, Special Committee on Public Interest Practice, Informational Report (circulated for discussion only), February 1977, pp. 4-6.

If each attorney provided an average of 50 hours of free service each year, the equivalent of four full-time attorneys per 10,000 persons could be provided to 24 million poor.

Prepaid and Group Legal Services

The movement toward prepaid legal services now covers some 1.5 million persons in 5,000 organizations such as labor unions, consumer co-operatives, and student groups. 6/ There have been predictions that, by 1985, between 10 and 20 million households will be covered by prepaid programs. 7/ While these plans are not directed at the poor, they may offer a source of assistance for persons on the edge of poverty or those who face short-term hardships because of seasonal unemployment or other temporary financial reverses.

PROS AND CONS OF THE LOCAL INITIATIVE APPROACH

Under an approach that relied primarily on local initiative and discretion, the actual delivery of legal services could take several forms. The use of local staff attorneys could continue as the primary method, or various alternative or supplementary delivery methods could be adopted.

6/ Theodore J. St. Antoine, "Growth Patterns in Legal Services", AFL-CIO American Federationist, March 1976. Estimate of numbers of persons covered by prepaid and group plans were obtained from the Resource Center for Consumers of Legal Services.

7/ Council for Public Interest Law, Balancing the Scales of Justice, 1976, pp. 325-326 refers to work of Harold S. Becker, et al.; The Socio-Economic Impacts of Prepaid Legal Services (Glastonbury: The Futures Group, 1975).

Even under the existing LSC program, 19 demonstration projects are being studied that include alternatives such as:

- o Vouchers with which a client can purchase services from legal service agency or private attorney;
- o "Judicare", which reimburses members of the private bar;
- o Contracts with private law firms;
- o Prepaid legal insurance; and
- o Legal clinics staffed by volunteer lawyers.

The corporation will submit an interim report to the Congress on the status of these projects. The alternatives recommended in the final report could be incorporated in the existing program or under a basic departure from the present system.

The major advantage to relying on local initiatives with general financial assistance from the federal government is that it permits priorities to be established at the local level--both in terms of which programs for the poor are most important and how such programs rank with other claims for public funds. Some of the more general federal grants, such as Title XX of the Social Security Act, also involve commitment of local funds through matching requirements. Reliance on indirect federal assistance would also remove duplicate sources of federal funding, which may overstate total LSC grant requirements for providing minimum services.

On the other hand, the Legal Services Corporation does not consider indirect federal assistance or donated services to be realistic alternatives to direct federal funding.

Several major objections can be advanced against a local discretionary approach. Most important, state and local governments and the

private bar might or might not elect to finance legal assistance to the poor, depending on other priorities. The unlikelihood of adequate local initiatives was one of the factors that led to direct federal financing more than a decade ago. Other federal grant programs are considered too indirect in their program coverage, and they do not target the specific population of concern to the LSC. The centralized direction provided by the Legal Services Corporation is also considered an effective means of providing oversight and leadership to local programs independent of political control at the national and local level.

APPENDIX. DISTRIBUTION OF LEGAL SERVICE CORPORATION
GRANTS BY STATE: ESTIMATED FOR FISCAL
YEAR 1977; IN THOUSANDS OF DOLLARS a/

Alabama	1,310	Nebraska	458
Alaska	850	Nevada	217
Arizona	2,429	New Hampshire	481
Arkansas	217	New Jersey	3,736
California	13,650	New Mexico	865
Colorado	1,525	New York	10,772
Connecticut	1,907	North Carolina	1,611
Delaware	192	North Dakota	296
District of Columbia	1,670	Ohio	3,697
Florida	2,792	Oklahoma	995
Georgia	2,412	Oregon	1,304
Hawaii	422	Pennsylvania	3,342
Idaho	358	Rhode Island	559
Illinois	3,942	South Carolina	873
Indiana	1,148	South Dakota	386
Iowa	593	Tennessee	1,650
Kansas	381	Texas	5,092
Kentucky	1,651	Utah	402
Louisiana	1,950	Vermont	386
Maine	677	Virginia	1,308
Maryland	954	Washington	2,044
Massachusetts	3,793	West Virginia	1,700
Michigan	3,867	Wisconsin	1,315
Minnesota	639	Wyoming	137
Mississippi	1,982	Micronesia	696
Missouri	1,363	Puerto Rico	4,352
Montana	549	Virgin Islands	183
			<u>102,080</u>
		Undistributed	<u>4,152</u>
		TOTAL	106,232

a/ Includes special programs for Indians and migrant workers. Excludes contracts for regional support centers.