

determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” SBC Commc’ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff’d sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” SBC Commc’ns, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” Microsoft, 56 F.3d at 1459. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court

remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’.”

recently confirmed in SBC Communications, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” SBC Commc’ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” SBC Commc’ns, 489 F. Supp. 2d at 11.<sup>4</sup>

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: March 4, 2008.

Respectfully submitted,

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<sup>4</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”).

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Submission for OMB Review: Comment Request

March 13, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number) / e-mail: [king.darrin@dol.gov](mailto:king.darrin@dol.gov).

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management (DM), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316 / Fax: 202-395-6974 (these are not a toll-free numbers), E-mail:

[OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

*The OMB is particularly interested in comments which:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Office of Small Business Programs.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Small Business Programs Information Management System.

*OMB Number:* 1290-0002.

*Affected Public:* Private Sector—Business or other not for-profits.

*Estimated Number of Respondents:* 1,000.

*Estimated Total Annual Burden Hours:* 150.

*Estimated Total Annual Costs Burden:* \$0.

*Description:* The Small Business Programs Information Management System gathers, documents, and manages information for DOL's Office of Small Business Programs' constituency groups. This system allows constituent groups to voluntarily provide information about their organizations. The information is used by DOL to maximize communication with the respective constituency groups regarding relevant small business programs, initiatives, and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for DOL-sponsored activities.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

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**BILLING CODE 4510-22-P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meetings of the Board of Directors and One of its Committees; Amended Notice: Technical Correction to the Agenda; Board of Directors Meeting

*Notice:* The Legal Services Corporation (LSC) is announcing an amendment to the notice of the March 24, 2008 meeting of the Board of Directors, the second of two meetings being held on that date. The amendment is being made to reflect a technical correction to the meeting *Agenda* of the Board of Directors. There are no other changes to the original notice.

Specifically, the following correction has been made to the Board of Directors meeting agenda.

- The language at item 3 of the agenda of the Board of Directors has been corrected to read: "Consider and act on LSC *Code of Ethics and Conduct* and designation of Ethics Officer(s)" [Emphasis added.]

MEETING SCHEDULE <sup>1</sup>		THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
Monday, March 24, 2008	Time	<b>Meetings of Humanities Panel</b>
1. 2008 Ad Hoc Committee.	4:30 p.m.	<b>AGENCY:</b> The National Endowment for the Humanities.
2. Board of Directors	(Follows Immediately.).	<b>ACTION:</b> Notice of meetings.

<sup>1</sup> Please note that the times in this notice are Eastern Daylight Saving Time.

**LOCATION:** 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

**STATUS OF MEETINGS:** Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone should call 1-800-857-4830 and enter 34309 on the key pad when prompted. To enhance the quality of your listening experience as well as that of others, and to eliminate background noises that interfere with the audio recording of the proceeding, please mute your telephone during the meeting.

### Amended Agenda

#### Board of Directors

##### MATTERS TO BE CONSIDERED:

- Report of 2008 Ad Hoc Committee.
- Consider and act on recommendations of the 2008 Ad Hoc Committee.
- Consider and act on LSC *Code of Ethics and Conduct* and designation of Ethics Officer(s).
- Consider and act on dissolution of 2007 Search Committee for LSC Inspector General.
- Consider and act on other business.
- Consider and act on motion to adjourn the meeting.

##### CONTACT PERSON FOR INFORMATION:

Patricia D. Batie, Manager of Board Operations, at (202) 295-1500.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295-1500.

Dated: March 14, 2008.

### Victor M. Fortuno,

*Vice President, General Counsel & Corporate Secretary.*

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**BILLING CODE 7050-01-P**

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

- Date:* April 1, 2008.  
*Time:* 8:30 a.m. to 5:30 p.m.  
*Room:* 421.

**Program:** This meeting will review applications for America's Historical and Cultural Organizations in Planning and Implementation Grants Program, submitted to the Division of Public Programs, at the January 23, 2008 deadline.

- Date:* April 2, 2008.  
*Time:* 8:30 a.m. to 5 p.m.  
*Room:* 421.

**Program:** This meeting will review applications for America's Media