

# **The Impact of the Repeal of the Attorney Fees Ban**

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# History

- Prior to 1996- Could recover fees from opposing parties
- 1996 appropriations bill- Banned recovery of fees
- 2010 appropriations bill- Lifted the ban
- LSC Final Rule effective April 26, 2010 amended 1642- Allows recovery of fees
- No effect on 1609, Fee-Generating Cases

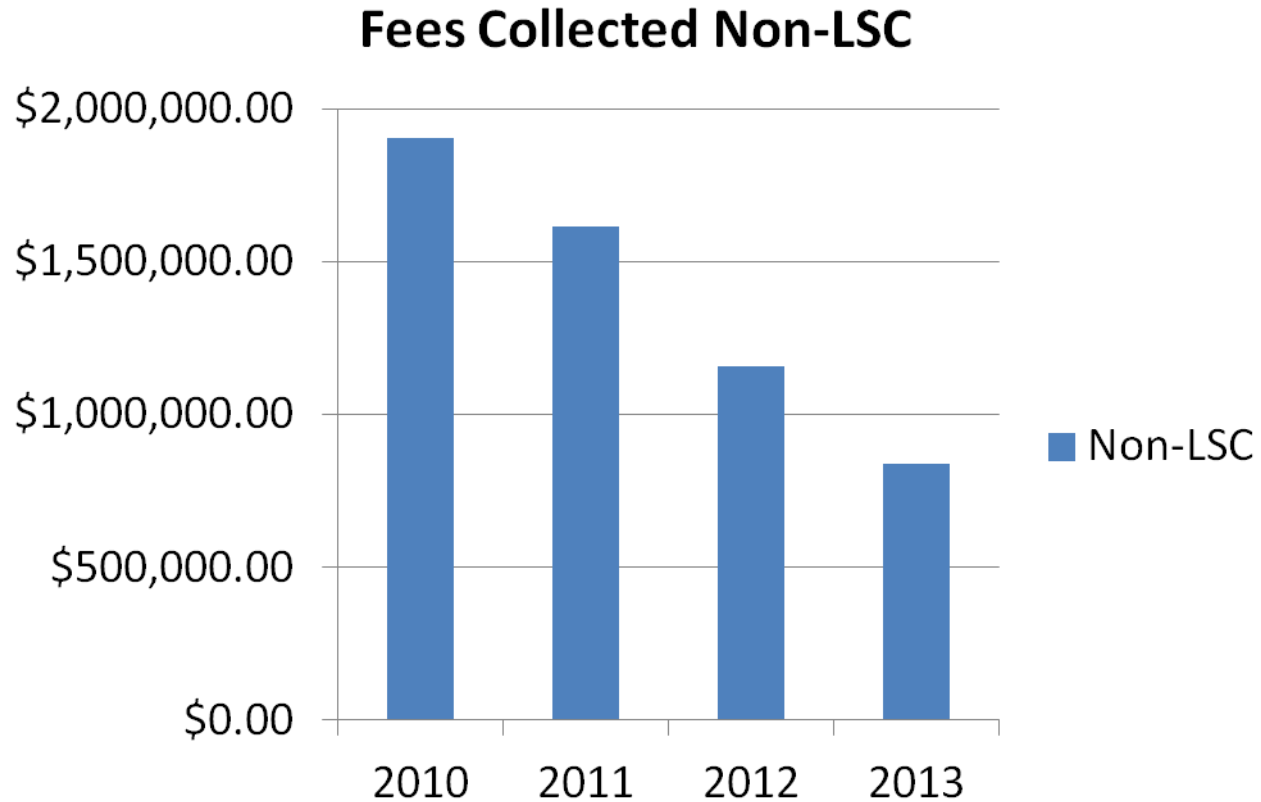
# Survey

- August 2013 MALS sent a survey to all LSC-funded organizations (and many non LSC-funded)
- Received 26 responses
- 19 LSC-funded
- 7 non LSC-funded

# AREAS OF SURVEY

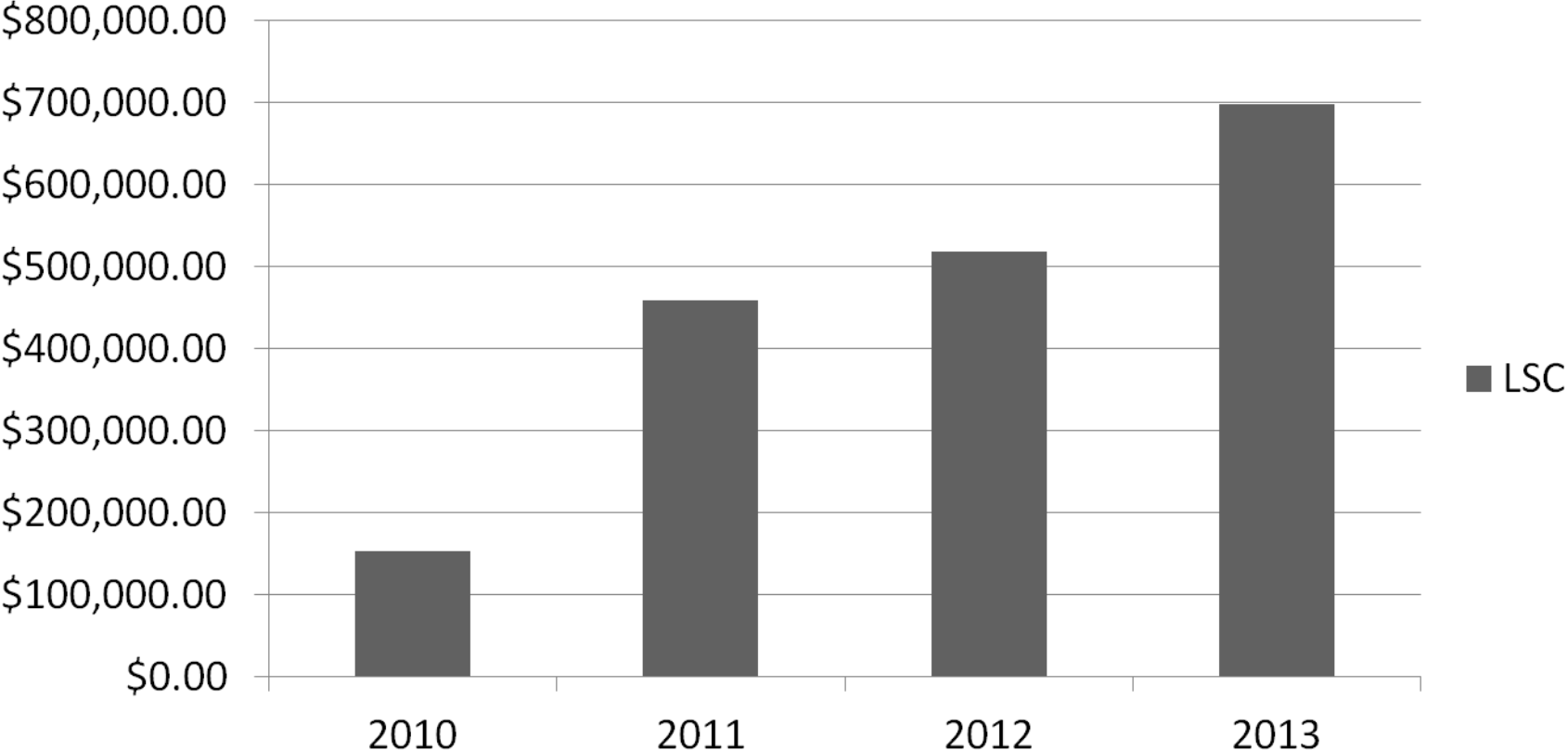
- Fees collected by year since 2010
- Recovery by substantive priority area
- Legal basis for recovery
- Recovery by judgment or settlement
- Budgeting for recovery
- Incentives for recovery
- Lessons learned or tips for others
- Prevailing questions

# FEES COLLECTED BY YEAR



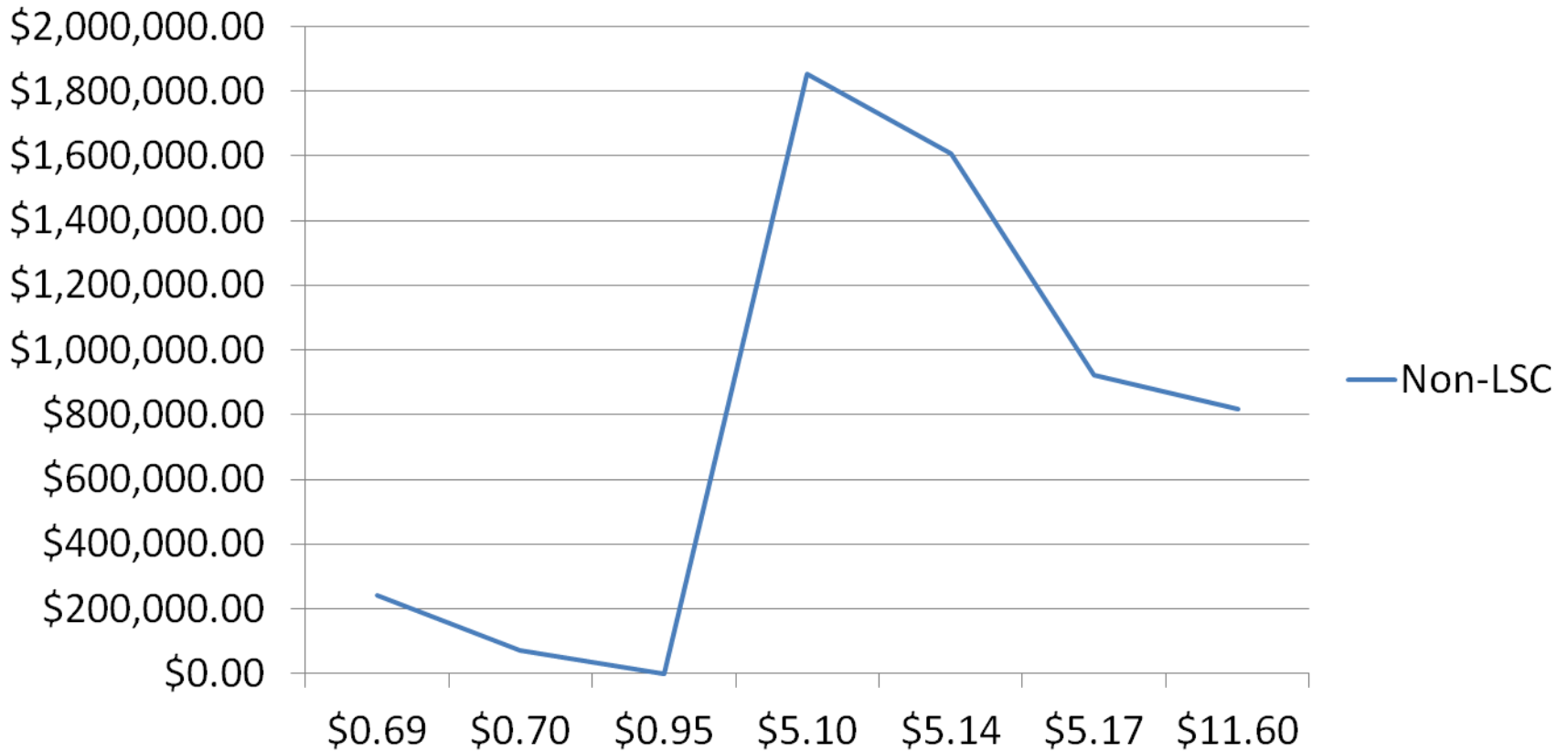
# FEES COLLECTED BY YEAR

Fees Collected LSC

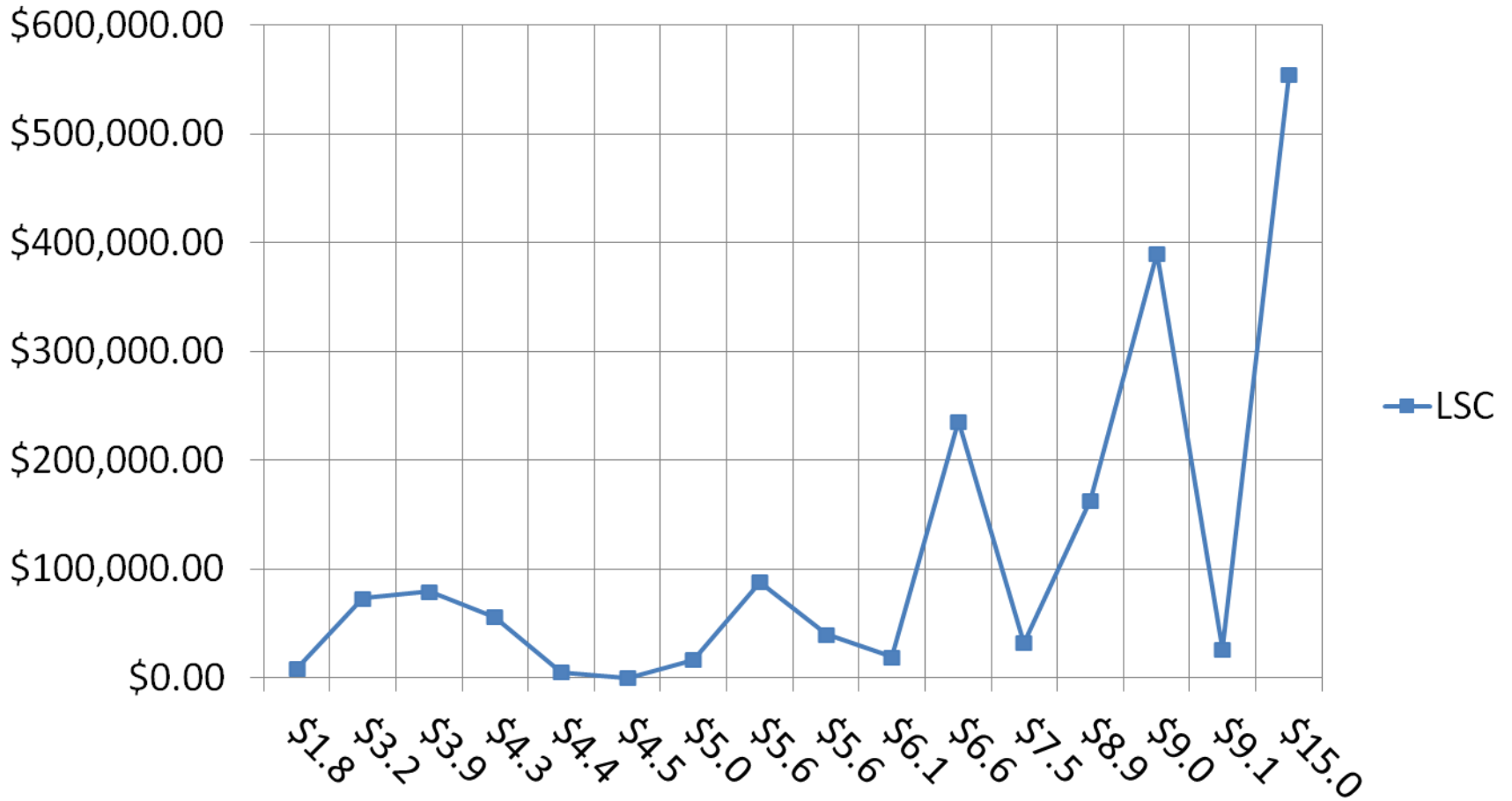


# Fees Collected vs. Annual Budget in Millions

## Fees Collected Non-LSC



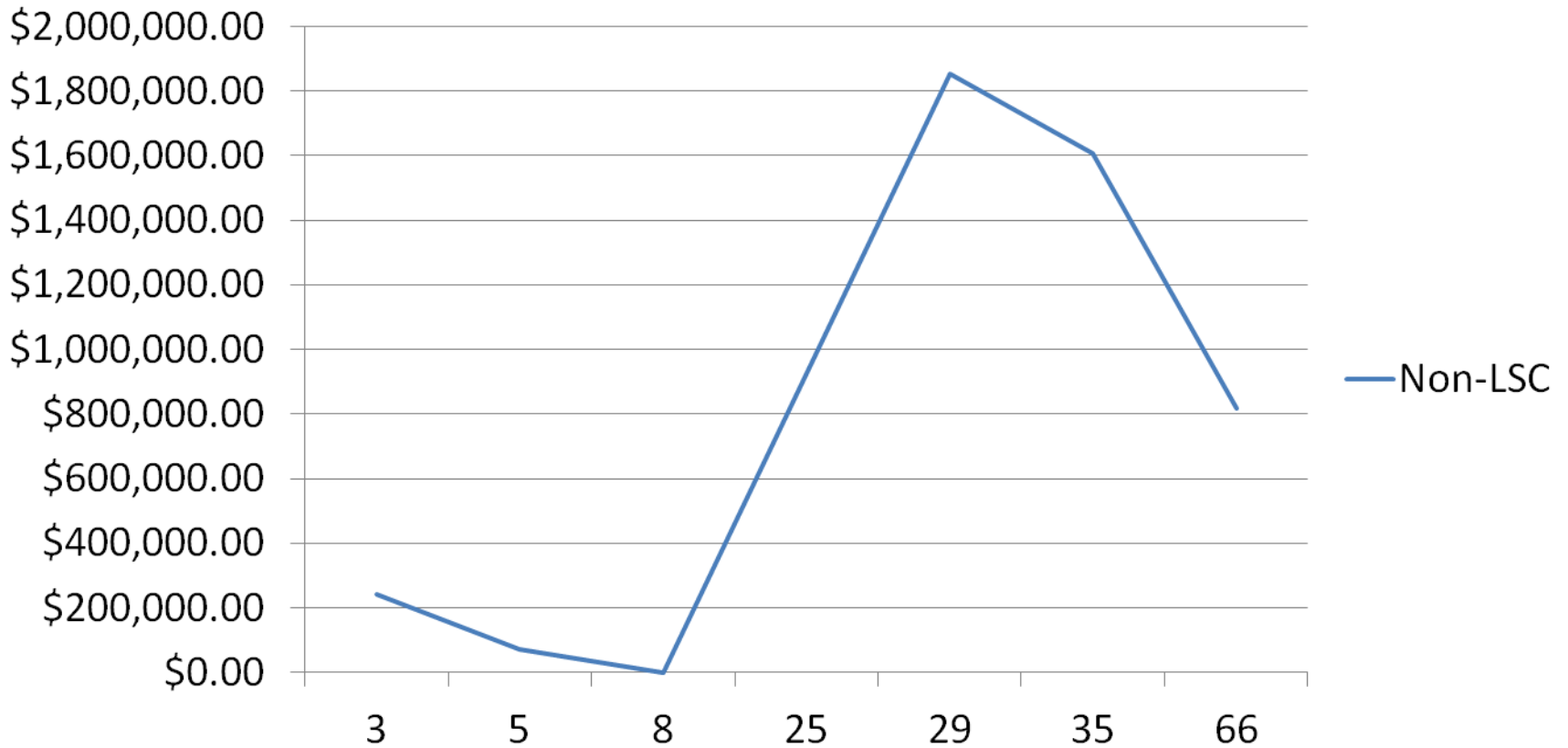
# Fees Collected vs. Annual Budget in Millions





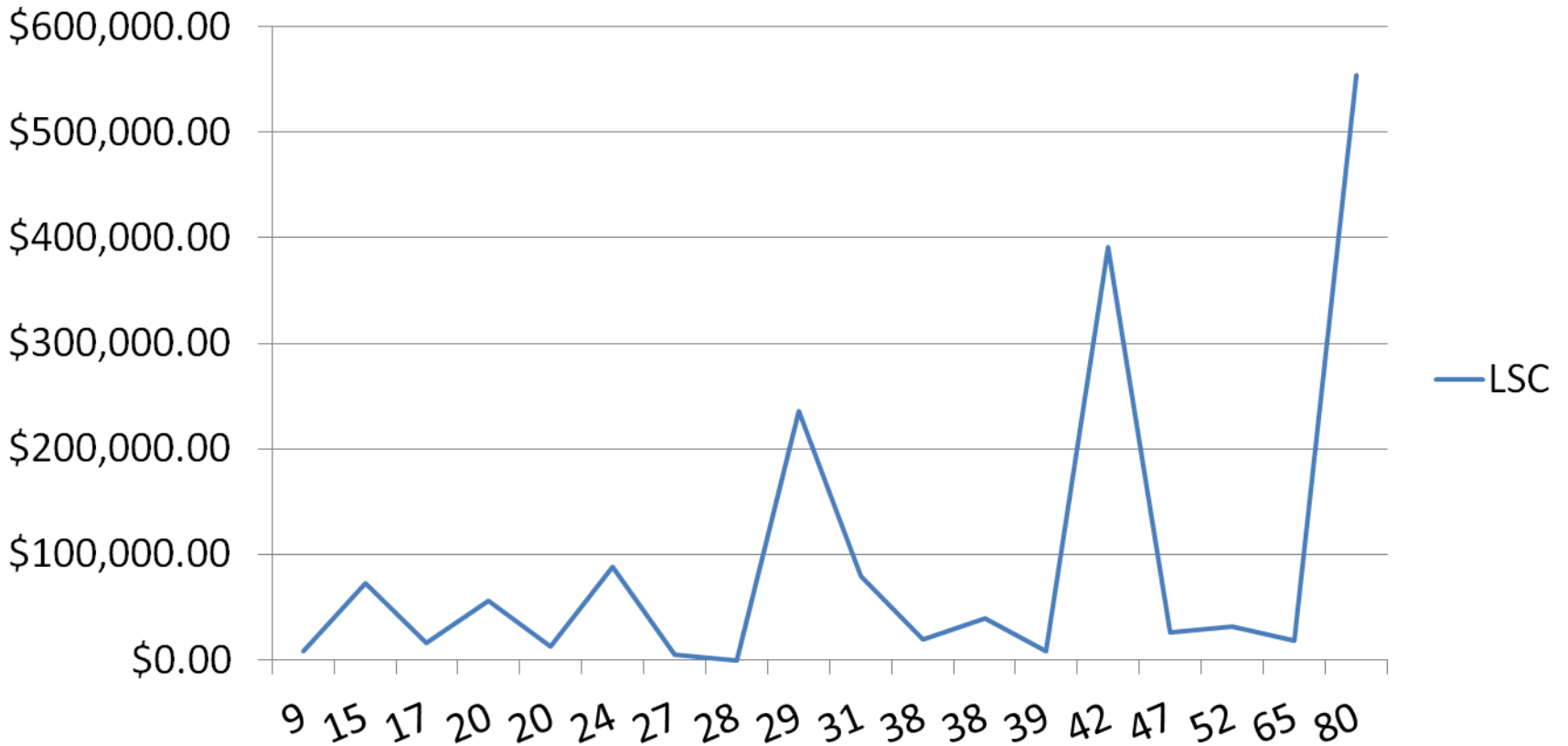
# Fees Collected vs. Number of Attorneys

## Fees Collected Non-LSC



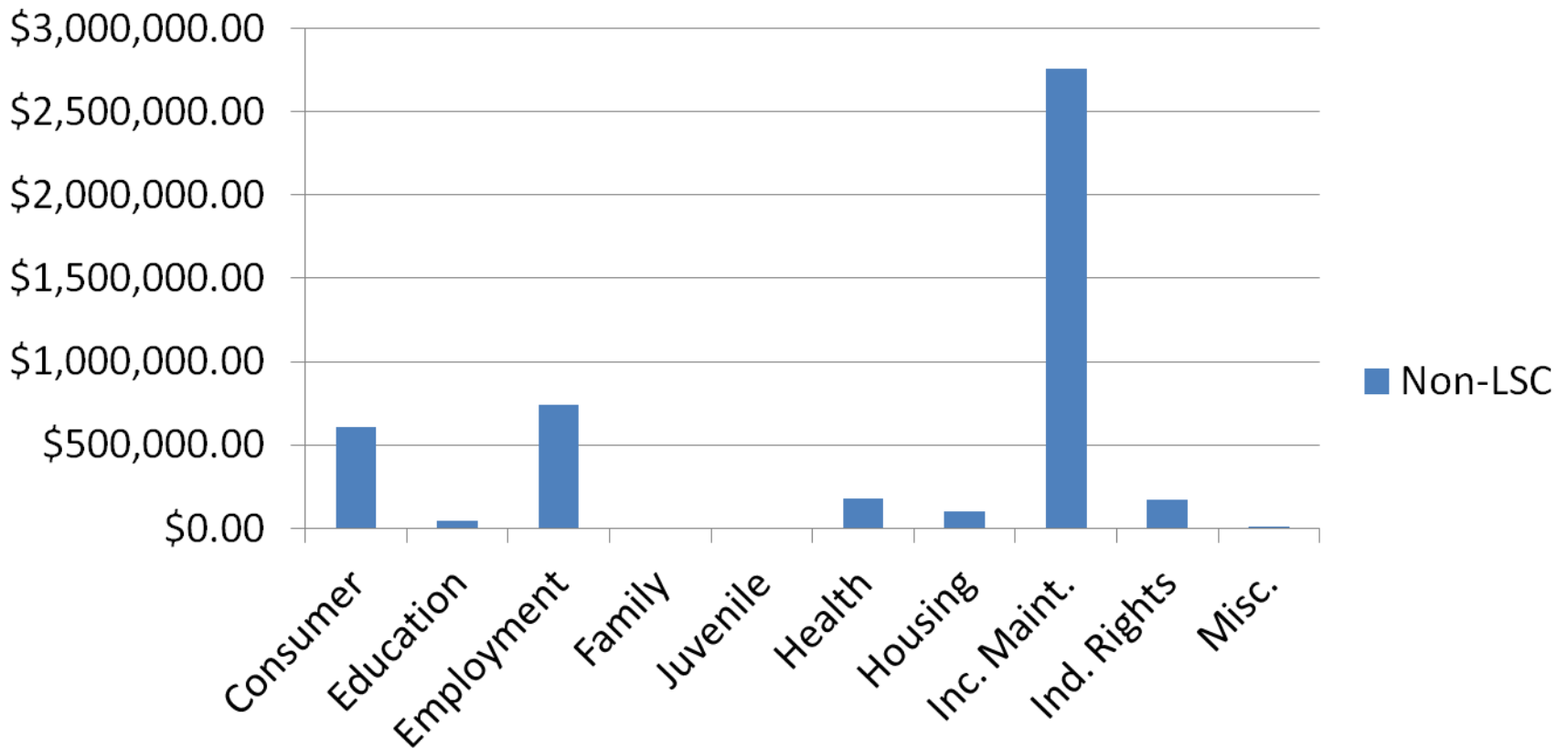
# Fees Collected vs. Number of Attorneys

## Fees Collected LSC



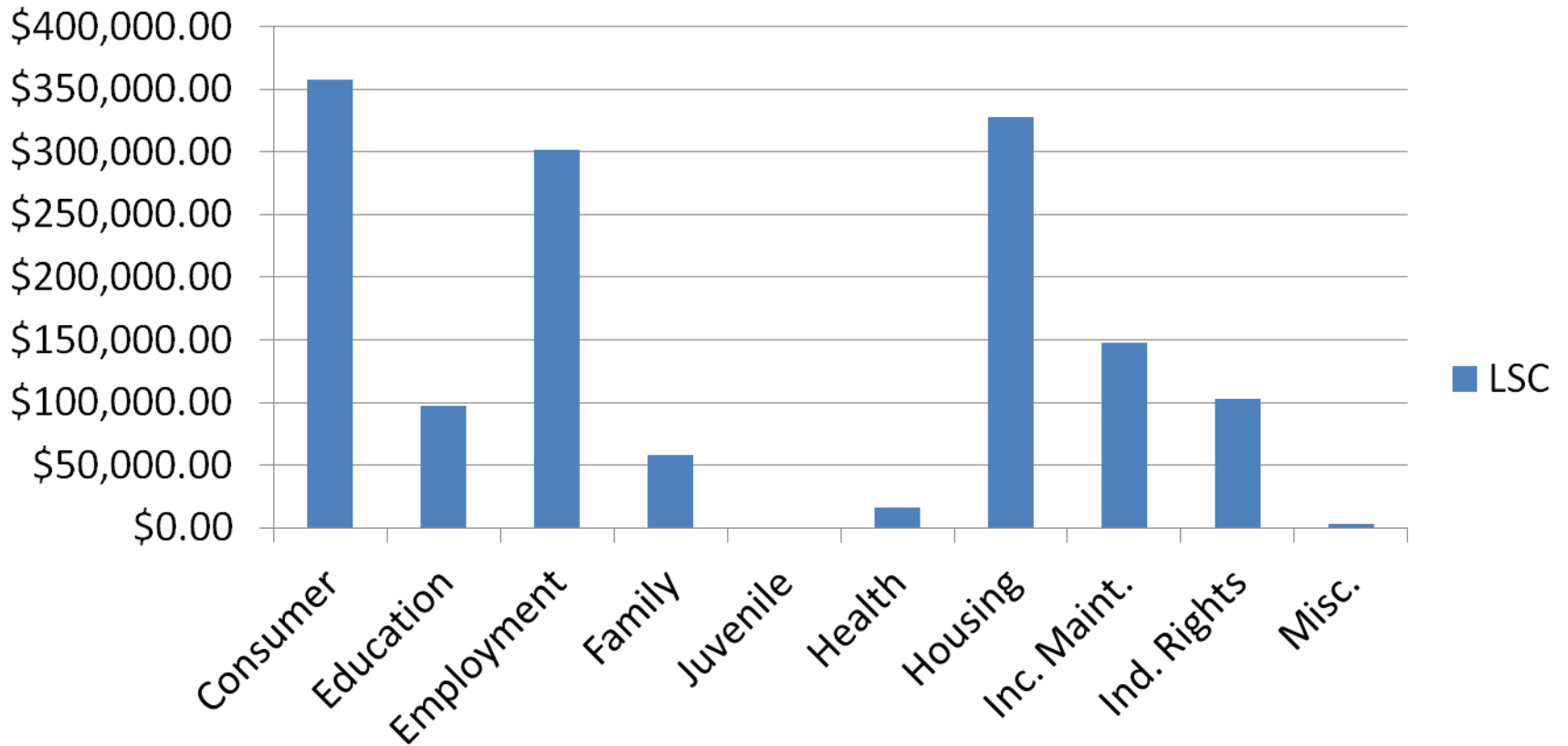
# Recovery by Substantive Priority Area

## Fees Collected Non-LSC



# Recovery by Substantive Priority Area

Fees Collected LSC



# Legal Basis for Recovery

- Theories used by non LSC-funded organizations:
  - FLSA/Agricultural Workers' Protection Act
  - 42 U.S.C. § 1988
  - 42 U.S.C. § 1983
  - SSD/SSI fees on back payment awards
  - Landlord/tenant laws
  - FDCPA
  - Consumer protection laws

# Legal Basis for Recovery

- Theories used by non LSC-funded organizations (cont.)
  - ADA
  - Fair housing laws
  - Breach of contract

# Legal Basis for Recovery

- Theories used by LSC-funded organizations:
  - ADA
  - FLSA/Agricultural Workers' Protection Act
  - False Claims Act
  - Equal Access to Justice Act
  - WARN Act
  - VAWA
  - Consumer protection laws

# Legal Basis for Recovery

- Theories used by LSC-funded organizations (cont.):
  - Landlord/tenant laws
  - RESPA
  - Sanctions
  - Breach of contract
  - Contempt
  - Divorce, DV and other family law



# Legal Basis for Recovery

- Theories used by LSC-funded organizations (cont.):
  - FDCPA
  - 42 U.S.C. § 1983

# Judgment or Settlement

Recovery of fees by  
settlement exceeds recovery  
by judgment by approximate  
60/40 ratio

# Budgeting for Recovery

- Of 7 non LSC-Funded organizations responding, 6 budget for recovery
- Of 18 LSC-funded organizations responding, 9 budget for recovery
- In 2010 only 1 of the LSC-funded organizations budgeted for recovery; 5 in 2011; 6 in 2012
- Those who budget for recovery of fees tend to recover more fees

# Budgeting for Recovery

- Non LSC-Funded:
  - $\$50,000/\$687,000 = 7.3\%$
  - $\$25,000/\$700,000 = 3.6\%$
  - $\$350,000/\$5.1 \text{ million} = 6.9\%$
  - $\$390,000/\$5.14 \text{ million} = 7.6\%$
  - $\$250,000/5.17 \text{ million} = 4.8\%$

# Budgeting for Recovery

- LSC-Funded
  - \$50,000/\$3.15 million = 1.6%
  - \$5,400/\$5 million = < 1%
  - \$40,000/\$6 million = < 1%
  - \$25,000/\$6.1 million = < 1%
  - \$100,000/\$8.9 million = 1%
  - \$3,175/\$9.1 million = < 1%

# Incentives for Recovery

No responding organization reported a specific monetary incentive for recovery of fees

# Tips for Recovery

- Thoroughly educate the judiciary on the role of your organization
- Keep detailed, itemized records of time spent on a case
- Begin discussing attorney fees with from the outset of the case
- Emphasize to client the importance of collecting attorney fees

# Tips for Recovery

- Have retainer agreement containing the client's consent to your seeking fees from the opposing party
- When calculating reasonable fees:
  - Use prevailing market rate standard
  - Consider the the experience of the lawyer
  - Take into account the complexity of the case



# Concerns Regarding Recovery

- Setting attorney fee amount in a negotiated settlement
- Handling conflict between legal aid attorney's demand for fees and client's interest in securing the best settlement
- Appropriately handling lump sums
- Taxation of attorney fee awards