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March 16, 2012

Mattie Cohan, Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

RE: Notice of Proposed Rulemaking on Alternate Sanctions

Dear Ms. Cohan:

I am writing on behalf of Iowa Legal Aid, the statewide LSC recipient in Iowa, to urge LSC to not pursue the proposed rulemaking on provisions that would allow LSC to impose additional sanctions on grantees in certain circumstances. If the Corporation elects to proceed, however, changes should be made in order to ensure fair-handed enforcement of the regulation and minimize the potential disruption to clients served by LSC funded programs.

The potential impact of these rules allowing sanctions up to five percent and the suspension of an LSC grant for up to 90 days will have devastating consequences for the clients who rely on LSC programs for access to the court system to protect themselves from domestic violence, homelessness and an array of other problems. A grant award of $3 million, reduced by 5% would result in the loss of $150,000, nearly the cost of two staff attorneys in many legal aid programs. The loss of two staff attorneys in Iowa Legal Aid would result in the closure of 640 fewer cases which would impact approximately 1,500 persons in the households.

If sanctions under this proposal are to be imposed, there should be clear and convincing evidence of the need for this type of additional sanction and some showing that alternative forms of remediation of a compliance problem are not appropriate. There are multiple alternatives the Corporation could employ to address compliance problems that may be the result of an oversight, misinterpretation or unintended negligence. In fact, the Corporation has clearly done so on numerous occasions over the years resulting in the merger of many programs over a decade ago and continued enforcement actions through the grant renewal process and in utilizing the oversight tools that are already available to the Corporation.

The rules should not be pursued further because the standards for implementation are unclear and inadequate. Certainly there are situations where programs interpret regulations in a different manner than LSC. In fact, there are multiple examples of where different offices of LSC have interpreted a regulation in distinctly different ways. The types of rules under consideration to sanction programs could be used by a different corporate leadership that is motivated to take punitive action against programs. Having worked in an LSC funded program for more than 30 years, I am well aware of past instances when the Corporation's leadership was predisposed to take punitive actions against programs. The current Board should not allow future LSC administrations to have the authority to take punitive actions that will have the devastating consequences for clients discussed above. The regulations, once adopted, will be around

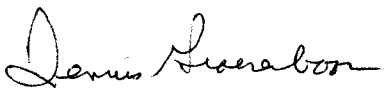
for decades. This Board and this LSC administration must consider the larger context of legal services funding and the political environment, not just today, but for the long-term as well. Adoption of this type of regulation, with the minimal and inadequate due process standards that are provided with nearly unfettered discretion on the part of the Corporation to implement these alternate sanctions, is not a legacy that this current administration or the Board should leave for the legal services community.

If the Board is to pursue this regulation, substantial modifications should be made in order to address the points raised above. For example, the proposal that was abandoned by the Board in 2008 allowed for the right to seek review by the LSC President and a decision to be made solely on the information contained in the record and any additional submissions to supplement the record. There are no real standards for LSC to use in imposing the sanctions. The proposal for the up to 5% sanction is that a "substantial violation" will be determined by looking at "(1) The number of restrictions or requirement violated; (2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement; (3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions; (4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and (5) Whether the violation was knowing and willful." There is no requirement that the violation be willful before sanctions can be applied. There is no indication of the importance to be placed on violation of a Congressionally imposed restriction as opposed to non compliance with an instruction or guideline. The proposed sanctions do not require that a good faith difference of opinion with regard to interpretation of LSC's policies and requirements be taken into consideration.

LSC has detailed guides and handbooks such as the Property Acquisition and Management Manual, the CSR Manual, the Accounting Guide, and the Audit Guide. The proposed sanctions apply not only to an alleged violation of a law or regulation, but also to an instruction, rule and guideline. On occasion, LSC has changed the interpretation of its own regulations and policies. The fact that there are minimal and inadequate due process standards that would provide a program the opportunity to explain its position makes the proposal more troubling.

Thank you for considering these matters.

Sincerely,



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