



MARYLAND
LEGAL AID

Advancing Human Rights and Justice for All

BOARD OF DIRECTORS

EXECUTIVE COMMITTEE

Warren S. Oliveri, Jr., Esq.
President

Gwendolyn Johnson
Vice President

Marquita Wise-Jones
Secretary

G. Daniel Shealer, Jr., Esq.
Treasurer

Jo M. Glasco, Esq.
Member At Large

Erek Barron, Esq.

Carlos A. Braxton, Esq.

Phyllis Butler

Jessica duHoffmann, Esq.

Robert T. Gonzales, Esq.

Herman G. Hamilton, Jr.

Ora Johnson

Beth Pepper, Esq.

Ronald E. Richardson, Esq.

Paul Mark Sandler, Esq.

Shella J. Sullivan, Esq.

Richard L. Wasserman, Esq.

EXECUTIVE STAFF

Wilhelm H. Joseph, Jr., Esq.
Executive Director

C. Shawn Boehrlinger, Esq.
Chief Counsel

Gustava E. Taler, Esq.
Chief Operating Officer

2 April 2012

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

Sent by E-mail and Regular Mail

RE: Comments on Notice of Proposed Rulemaking on termination procedures, enforcement, and suspension procedures (45 CFR Parts 1606 and 1623)

Dear LSC Board of Directors:

Maryland Legal Aid writes in opposition to the proposals offered by the Legal Services Corporation ("LSC") to change the above-referenced regulations. Established in 1911, Maryland Legal Aid is the sole recipient of LSC funds in Maryland and employs close to 300 staff, more than 150 of whom are lawyers. We operate 13 offices across the state and in 2011 served over 60,000 people. Our colleagues from Michigan, Georgia, and Iowa have set forth compelling grounds to reject the proposed regulations, and we join in the concerns shared by them. Specifically, Maryland Legal Aid opposes the following:

1) **The proposal to change 1606.13(d) to eliminate the provision that any funds recovered by LSC pursuant to a termination of a program contract be used in the same service area from which they were recovered.** This provision runs afoul of Congressional intent to distribute funds based upon the poverty population.

2) **The proposal in 1606.15 to add sanctions of less than 5% of the annual LSC grant and in 1623.4 to increase the maximum time limit for suspension from 30 to 90 days.** These additional punishments were not recommended by the GAO or LSC's Fiscal Oversight Task Force, and no compelling reasons have been made to support the need for enhanced penalties. LSC currently has a myriad of tools available to ensure a program's compliance, including required



MARYLAND LEGAL AID

500 East Lexington Street
Baltimore, Maryland 21202

Office 410-951-7777

Fax 410-951-7778

www.mdlab.org

TTY Users

Call Maryland Relay

Dial 7-1-1

The Legal Aid Bureau Inc. is a 501(c)(3) organization that provides free civil legal services to low-income people in every Maryland community. A copy of our current financial statement is available upon request by calling our office: (410) 951-7719. Documents and information submitted to the State of Maryland under the Maryland Charitable Solicitations Act are available from the Office of the Secretary of State, State House, Annapolis, MD 21401, for the cost of copying and mailing. All funds received by the Legal Aid Bureau, Inc. are spent in accordance with the Legal Services Corporation Act of 1974, as amended 1977, 42 U.S.C. §§ 2996 et. seq., its implementing regulations, 45 C.F.R. § 1600 et. seq., and other applicable law.

corrective actions resulting from LSC programmatic and operational audits, special grant conditions, short-term funding, 30 day funding suspensions, terminations, debarments, and a competitive proposal process in which programs are required every three years to submit exhaustive application responses to justify continued funding. With this process, LSC may discontinue funding for poorly performing programs.

Furthermore, the proposal to add sanctions contains insufficiently clear standards to determine if a “substantial violation” has indeed occurred to warrant the new punishments. LSC decision-makers are provided too little guidance and too much discretion in the process and LSC grantees should not have to speculate as to what would constitute a “substantial violation.”

Programs faced with the new proposed sanctions are given inadequate due process protections - only an informal meeting with an LSC representative within 5 days with an additional 10 days to submit documents. No provision is made for an impartial hearing before an impartial hearing officer, with attendant protections such as the rights to subpoena and cross-examine witnesses, the right to appeal, and the right to have a record of the hearing created to ensure that the right to appeal is meaningful.

A more fundamental question must also be addressed in response to the proposed regulatory changes. That question is what LSC’s response to already resource-challenged field programs across the country should be in an environment of declining funding – from LSC, from IOLTA, and elsewhere. LSC’s mission is *“to promote equal access to justice in our Nation and to provide high quality civil legal assistance to low-income persons.”* This mission is consistent with LSC grantees across the country. Despite those consistent statements of mission, the proposed regulations would only serve to exacerbate the tension that exists between LSC and its grantees and obfuscate LSC’s role from providing oversight of federal funding to governing independent, private non-profit organizations.

The regulations would require that grantees devote dwindling resources to bureaucratic matters to avoid the imposition of harsher sanctions. Resources devoted to administrative compliance are already great. For programs that have lost 19% of funding from LSC over the last two years, the proposed changes can only result in further reallocation of resources away from client services to administrative oversight. **This is the most important point to be made with respect to the proposed changes – they negatively impact the provision of services to clients. This should be the central consideration for any change proposed by LSC.**

Maryland Legal Aid’s total revenue includes less than 18% from LSC. The dedication of additional resources to avoid punishment is not commensurate with any benefit derived from LSC. The imposition of one of the proposed punishments would undoubtedly result in staff reduction and the attendant decrease in service to clients.

Board of Directors
Legal Services Corporation
April 2, 2012
Page 3

While the rationale for increased punishments and sanctions is difficult to ascertain, the change in regulations are presumably proposed to appease political forces which have historically been hostile to the mission and purpose of legal services programs. Some of these forces, however, will not be satisfied no matter how draconian proposed punishments of field programs may be.

A more cooperative, positive approach to ensuring program compliance would reap more benefits than those proposed. This approach, to provide a few examples, may include the provision of greater training opportunities for management and staff, the creation of model policies and feedback and review of existing field program policies, technical assistance with development of meaningful outcomes to highlight the work of programs, enhanced attention to the clients served and the significant benefits that programs bestow upon them, and more effective interaction with Congressional staff to emphasize the importance of legal services as a resource for constituents. Tasks such as these would allow LSC to work in a cooperative environment with field programs to improve program performance, not in a progressively adversarial one.

Your attention to our comments is appreciated. Maryland Legal Aid is grateful for the opportunity to submit and share them with you.

Sincerely yours,



Wilhelm H. Joseph, Jr.
Executive Director

cc: Warren S. Oliveri, Esq.