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Northwest Justice Project

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César E. Torres
Executive Director

March 30, 2012

Ms. Mattie Cohan, Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
3333 K Street NW
Washington, D.C. 20007

Re: Proposed Amendments to 45 C.F.R. 1606, 1618 and 1623

Dear Ms. Cohan:

I am writing on behalf of the Northwest Justice Project (NJP) to add our voice to those of others who have commented in regard to adverse impacts on LSC recipients of the proposed regulation amendments published at 77 Fed. Reg. 4749-54 (Jan. 31, 2012). In particular, NJP is concerned that LSC mistakes the gravity of “limited reduction in funding” of less than 5 % of the total amount of financial assistance received from LSC. The 5% does not appear to be limited to the Basic Field grant amount, but appears to encompass the total LSC funding received in the relevant year. For NJP, the potential limited reduction could and apparently would be based on the full value of all combined LSC grants, including our Basic Field Grant, Migrant Grant, Native American Grant, and possibly all TIG grants. A reduction of up to 4.9% of total LSC financial assistance received by NJP for the current 2012 year based on our Basic, Migrant and Native American grant would be \$274, 581 – a loss of funding for nearly four FTE mid-range salary staff attorney positions. A 4% reduction would amount to a loss of \$224,148 or nearly three FTE attorneys. If you also include LSC Technology Initiative Grant funds NJP receives, then a 4.9% reduction would amount to \$284,000 for 2012. This is not an insignificant adverse impact on the ability of a program of our size and geographic reach to serve clients throughout the state of Washington.

The ability of a program like NJP to have recourse only to an “informal meeting” with the Corporation in order to “attempt to show that the limited reduction should not be imposed” provides little solace in the absence of any provision in the regulations setting out whom the “informal meeting” is with; the scope of review or discretion of the persons with whom the meeting occurs; or, the criteria that would be applied to the “attempt to show” why the limited reduction should not be imposed. Importantly, it appears from the language of proposed new 45 C.F.R. § 1606.15, that there is no ability of a recipient to challenge the



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substantive grounds or the stated corrective action to be taken to avoid the limited reduction in the process.

While a recipient may submit written materials in opposition to the limited reduction in funding, NJP's experience in doing so when it has respectfully felt that LSC has made inaccurate determinations regarding compliance related matters has not been good and does not instill trust that these written materials will be fairly considered. This is true even when a determination involves a legitimate ambiguity in the requirements or difference of interpretation regarding a regulatory or compliance matter. Unless or until LSC can demonstrate that whatever review it proposes to give to a recipient's sincere efforts to demonstrate full compliance (even when the compliance requirement is either ambiguous or involves a good faith disputed interpretation of a requirement) will result in a serious good faith review, providing the recipient the benefit of the doubt, and involve a level of discretion that is meaningful to the process, then an "informal meeting" will not assure that imposition of a limited reduction sanction will not be arbitrary or overcome the adverse impacts of such a sanction.

NJP also opposes the extension of the time period for grant suspension to 90 days as set out in the proposed amendment to 45 CFR § 1623.4. Withholding LSC resources for 30 days is already a significant measure but at 90 days would likely be an unmanageable blow for many LSC grantees and would force them into severe fiscal crisis that could impact their reputation, service, staff moral and effectiveness as well as potentially cause them to temporarily or permanently cease operations.

For these reasons, NJP urges LSC to not adopt the amendments as written and to, instead, work with recipients and their representatives to establish a fair process for challenging such a sanction that is perhaps more limited than that provided for suspension or termination, but proportionate to the impact of the limited sanction and to further not extend the suspension term to 90 days. We greatly appreciate the opportunity to submit these comments. Thank you.

Sincerely,



Deborah Perluss
Director of Advocacy/General Counsel

C César E. Torres, Exec. Director