

Comment on Legal Services Corporation's (LSC) Proposed Rule

by

COMMITTEE ON LEGAL AID

Legal Aid #1

April 2, 2012

MEMORANDUM PREPARED BY THE COMMITTEE ON LEGAL AID

The New York State Bar Association's Committee On Legal Aid is charged with the duty of considering methods and proposals for rendering legal aid to the poor and of maintaining a continuing study of the administration of justice as it affects the poor. We work closely with the leadership of legal services providers from throughout the State, both LSC and non-LSC funded providers. We write in strong opposition to LSC's proposal for additional sanctions per your notice of Proposed Rulemaking dated January 31, 2012.

Our experience in New York demonstrates that there is no need for additional (termed "lesser") sanctions. In addition, the proposal as put forth by LSC is fundamentally flawed with respect to the lack of due process prior to implementation of drastic financial sanctions.

In the first instance, we believe that LSC currently has adequate tools to ensure compliance including:

- Required corrective actions;
- Special Grant Conditions;
- Short-term funding, including month-to-month funding;
- Questioned costs under 45 CFR 1630;
- Suspension of funding for up to 30 days under 45 CFR 1623;
- Terminations under 45 CFR 1606.3 including reductions of between 5% and 100% of a grant;
- Debarment under 45 CFR 1606.4; and
- Decisions not to refund a program during the competition process – 45 CFR 1634.

Given the wealth of LSC's current tools, there is no demonstrated need for additional sanctions. LSC management has put forth no evidence that the above-existing mechanisms to encourage and enforce compliance have failed. Indeed, in your Notice of Proposed Rulemaking, LSC states: "The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but there have been exceptions." No exceptions are elucidated; nor do we know of any instances of such non-compliance in New York or nationally that could not have been addressed through LSC's current tools.

We also note that the report of LSC's own Fiscal Task Force never identified a need for any additional sanctions. Nor did the Task Force include any evidence of non-compliance that additional sanctions might be needed to address.

We are particularly concerned that the reductions in funding embodied in this proposal will harm clients and applicants of LSC-funded programs and non-LSC funded programs. All legal services providers operate on very limited budgets. Reserves are either very low or exhausted. Many providers are currently struggling with instituting or avoiding layoffs, reductions in service, and the potential for office closures due to the nearly 19% reduction in our LSC funding over the last two years. The penalties as proposed could very well result in additional staff layoffs and further reductions in services. In New York, LSC providers also face significant additional LSC reductions over the next two years as a result of Census readjustments. These anticipated reductions and the sanctions permitted by the proposed regulation would impact both LSC providers and the non-LSC providers with whom they collaborate, as layoffs and office closures by LSC grantees will certainly increase the demand on their partners.

These types of cuts are particularly threatening given the intense need for civil legal services. In 2010, the Chief Judge's Task Force to Expand Access to Civil Legal Services found that 47% of all low income New Yorkers will experience at least one legal problem annually. This is at least 2,835,102 people statewide per year. The November 2011 Task Force Report also found that current legal services providers (LSC funded and non-LSC funded) meet the needs of only 20% of those who need assistance. Sanctions such as the ones permitted by LSC's proposal will have an immediate impact on the already limited services available to New Yorkers in need. In fact, the new Notice of Proposed Rulemaking has less due process than the draft notice presented by LSC in 2008. This belies LSC's commitment to ensuring justice, as justice should surely be provided to those who ensure justice for others.

Finally, there are no real standards for LSC to impose these considerable sanctions. The proposal states 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

