

**HOUSING AND  
DEVELOPMENT  
LAW INSTITUTE**

January 3, 2000

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**Re: Comment on Regulations**

**Dear Ms. Condray:**

The Housing and Development Law Institute (HDLI) is pleased to offer the following three general suggestions in response to the Corporation's notice, published in the Federal register on November 24, 2000, soliciting public comment on its regulations. HDLI is a nationwide nonprofit organization that acts as a legal resource to local public housing authorities and their counsel.

**1. Alternative Dispute Resolution**

Several years ago, with the kind assistance of General Counsel Fortuno, this organization, the National Association of Housing and Redevelopment Officials (NAHRO) and the Council of Large Public Housing Authorities (CLPHA) entered into discussions with representatives of the Corporation relating to the use of Alternative Dispute Resolution (ADR) techniques by LSC-funded entities in legal disputes with local housing authorities. HDLI, NAHRO and CLPHA suggested at that time that the Corporation consider issuing regulations that would encourage the use of ADR by its grantees in appropriate cases as an alternative to court litigation. Several meetings were held, but for a variety of reasons, including the pendency of federal housing program legislation and uncertainties in the Corporation's funding levels, the meetings were discontinued at the request of the Corporation.

We wish to take this opportunity again to urge the Corporation to consider the issuance of regulations encouraging the use of ADR. As before, HDLI stands ready to discuss the matter with representatives of the Corporation at any convenient time.

**2. Standards for Undertaking Appellate Litigation.**

While agreeing that, in general, everyone is entitled to his or her day in court, some housing authorities have expressed to us the view that different, more stringent standards ought to apply when a legal services entity is considering the

appropriateness of bringing appellate litigation. Housing agencies feel that appellate litigation is sometimes brought by LSC-funded entities when it is unnecessary or cannot be justified either by a likelihood of success on the merits, or as a prudent utilization of taxpayers money, or on a public policy basis. Bringing an inappropriate appellate case against a housing authority serves only to diminish the precious resources that the agency can make available to the low- and very low-income families who are its clients. We suggest, therefore, that the Corporation consider developing regulatory guidance concerning the circumstances under which LSC-funded entities ought to bring appellate litigation. Such guidance might, for example, require that such litigation be affirmatively justified in each case on the basis of regulatory criteria that take into account such factors as the relative gravity of the matter, the cost of the litigation, how the litigation comports with established federal policy, other potential uses for the resources that would be expended conducting the litigation, etc.

### **3. Sanctions for Unprofessional Conduct.**

HDLI has from time to time been told by local housing agencies that a lawyer employed by an LSC-funded grantee has conducted himself or herself in a personally abusive or unprofessional manner. We understand it to be the position of the Corporation that remediation of misconduct on the part of lawyers employed by its grantees is a matter that should be left to the applicable state bar associations and to the courts. We disagree. While the proportion of legal services counsel whose conduct can be fairly characterized as unprofessional is undoubtedly very small, the damage caused by their misconduct can be serious. We believe that, where federal tax dollars are funding legal services, the funder has an intrinsic oversight responsibility to ensure that those funds are not used to support conduct that is abusive or unprofessional. Our final suggestion, therefore, is that the Corporation institute a formal regulatory process under which members of the public may bring allegations of abusive or unprofessional misconduct by LSC-funded counsel to the attention of the Corporation, and upon a finding of misconduct, the Corporation would apply appropriate sanctions.

Thank you for the opportunity to offer these suggestions. If you desire to go into these matters with us in greater detail we would be most happy to discuss them further with you at any time. In the meantime, we wish to express our support generally for the fine work of the Corporation.

Sincerely,



William F. Maher  
Executive Director & Counsel