

June 20, 2005

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**RE: Development of Regulatory Agenda for 2005-2006**

Dear Mr. Fortuno:

This letter is submitted in response to the Federal Register notice of Friday, May 20, 2005 seeking comments on the development of regulatory agenda for LSC for 2005-2006. There are two areas that I am raising on behalf of Iowa Legal Aid.

The first issue involves regulations and restrictions involving receipt of attorney's fees. While it is recognized that the regulation currently in place arises out of Congressional restrictions, we are suggesting that LSC undertake study and analysis of the implications of this regulatory requirement and restriction.

The limitation on attorney's fees for LSC funded programs has a budgetary implication, but it also places Legal Services programs at a distinct disadvantage in representing low-income clients. The clients that we represent, therefore, are at a disadvantage because of this restriction. There is not a level playing field with regard to representation of low-income people in areas where attorney's fees are possible under statute. Statutory attorney's fees are available under both federal and state law. Those attorney's fees have been found to be an important part of the enforcement of laws adopted by the Congress and state legislatures throughout the country. The provisions allowing for attorney's fees have many implications. When clients represented by Legal Services Corporation funded programs are involved in cases where attorney's fees are available by statute, the settlement discussions are altered in a way that disadvantages the clients assisted by legal aid programs. An example involves consumer matters. Consumer cases are of increasing importance to low-income clients who are subjected to predatory lending, refund anticipation loans, car title loans and a host of other mechanisms that are used to try to siphon funds from low-income households that are least able to pay exorbitant rates. When the law is violated in these areas, provisions of federal and state law in many instances allow for attorney's fees. Settlement of these cases becomes much more difficult when legal services programs are involved on behalf of clients since the receipt of attorney's fees cannot be a part of the discussion.

This restriction on Legal Services Corporation funded programs has the effect of nullifying many other laws that are adopted by Congress and state legislatures. At a minimum, work should be done to eliminate this restriction with other funding so that LSC funded programs would be able to utilize other funds to handle cases in which attorney's fees are

available. This would level the playing field for low-income clients

The other reason for the change in this regulatory area is the impact that the regulation has on the budgets of Legal Services Corporation grantees. As a result of reduced resources, LSC funded programs turn away hundreds of individuals each month who are in need of legal assistance. Additional resources are needed. During the ten year period of 1986 to 1996, when the receipt of fees was permitted, Iowa Legal Aid averaged \$66,000 per year in fee awards. This additional revenue would translate into service in an additional 400 cases each year impacting over 1,000 individuals.

The second issue raised for consideration as a part of the regulatory agenda is not strictly a regulatory issue, but relates to a regulatory issue. The issue involves the Corporation's Case Service Reports (CSR). In the enforcement of the regulations, LSC has increased emphasis on compliance including an annual self inspection/certification process of CSR data. While it is important that LSC funded programs comply with the regulations, the amount of emphasis placed on compliance in recent years has dramatically altered the balance of work conducted by LSC programs. Likewise, the certification process is, to a degree, duplicative of the work performed by a recipient's independent auditor who samples cases as part of the Compliance Supplement requirements. Extraordinary time is devoted by staff each year to ensure compliance with regulatory requirements. The following chart provides statistics regarding the number of cases reviewed and the error rate for self-certification in the current and prior years:

Data Year <sup>1</sup>	Number of cases Reviewed	Number of Errors	Error rate
2004	207	9	4.3%
2003	205	10	4.9%
2002	187	12	5.9%
2001	191	10	5.2%
2000	191	6	3.1%
1999	200	15	7.5%

The impact of the emphasis on self certification and self inspection process for CSR data has been that extraordinary amounts of staff time are devoted to compliance rather than client representation. The value of this process is questionable from both a regulatory and client representation standpoint. The types of issues involved in the self inspection process have little to do with the quality of representation provided by programs, which is the current

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<sup>1</sup>Statistics for 1999 through 2002 are for the Legal Services Corporation of Iowa

initiative of President Barnett. Rather, the focus of scrutiny is centered on regulatory requirements that can be subject to broad interpretation. Even with the guidance provided by LSC, it is not always clear how certain regulations should be applied to the wide range of circumstances our staff encounter. An inordinate amount of staff time is spent reviewing, analyzing and debating the appropriate application of the regulations, none of which enhances the quality of the services we provide. We recognize that ensuring compliance with the regulations is important to maintaining the legal services community's credibility with Congress. At that same time, we think it is possible to strike a better balance between the emphasis on compliance with the objective of maintaining quality services. Along those lines, the certification process could be applied on a less frequent basis or replaced by reviews of specific issues. Another approach would be to apply the certification process to programs where their auditors have noted non-compliance.

Thank you for the opportunity to submit these comments as a part of the development of the regulatory agenda for LSC. If there are questions, please do not hesitate to contact me.

Sincerely,



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