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April 2, 2012

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

Re: Comments on LSC's Proposed Additional Sanctions

Dear Ms. Cohan:

We are the six LSC grantees who provide core, comprehensive legal services to eligible clients in the State of New York outside of New York City. We work together with limited resources to meet the legal needs of almost 3 million low income New Yorkers. 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 (so-called "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
- 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.

Our experience in New York is that when LSC staff require corrective action of one of us, there has been ready compliance. For example, we can report that Special Grant Conditions and required corrective actions have been sufficient to obtain corrective action with respect to compliance with Board requirements and matters of interpretation of the CSR Handbook, including how to close PAI and other cases. 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. We operate on very limited budgets. Reserves are either very low or exhausted. We 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, we face significant additional LSC reductions over the next two years as Census adjustments will result in another 21.9% cut in the next two years. For LASNNY, a 4% reduction would be $50,631. This is 77% of one week's payroll -- the impact will be immediate and substantial.

It is 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 addition, proposed Regulation 1606.1 sets forth an appeal process that provides woefully inadequate due process protections. Consider the potential loss to the smallest LSC grantee in New York (Neighborhood Legal Services). Based on its 2012 grant of $1,226,453, if assessed a 4% reduction, NLS could lose up to $50,658.12 per month. This is more than the starting salary of many staff attorneys outside of New York City. Similarly, your proposal to expand the maximum period of suspension from 30 to 90 days for a 4% sanction could result in the loss of use of up to $151,974 for NLS. In fact, the new Notice of Proposed Rulemaking has less due process than the draft notice presented by the Corporation in 2008. This belies the Corporation'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 or procedural requirement; (3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions; (4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and (5) Whether the violation was knowing and willful."

The Corporation lists only factors that might be considered in determining whether "a substantial violation" has occurred. These are not standards that would limit the discretion of an LSC employee. For example, there is no requirement that the violation be willful, only that willfulness is a factor to consider. LSC's proposal also lacks clarity as to when an alleged violation might be considered "more serious". The sanctions as written apply not only to an alleged violation of a law or regulation, but also

to an instruction, rule and guideline – perhaps even an individual employee's interpretation. LSC's various handbooks and guides, such as the Property Acquisition and Management Manual, the CSR Handbook, the Accounting Guide, the Audit Guide, are, on occasion, interpreted differently by varying LSC departments and employees. What happens when a program has a good faith difference of opinion with an LSC employee's interpretation of a substantial, statutory requirement?

Thank you for the opportunity to comment on these regulations. Should you wish any further information from the New York grantees, please feel free to contact me on behalf of my colleagues at lmoy@lasnny.org or 518-689-6304.

Sincerely yours,

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