

California Project Directors Association

c/o OneJustice • 433 California Street, Ste 815 • San Francisco, CA 94104 • P (415) 834-0100 • F (415) 834-0202

Sent by email to mcohan@lsc.gov

April 2, 2012

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

RE: Notice of Proposed Rulemaking on termination procedures, enforcement, and suspension procedures (45 CFR Parts 1606, 1618, and 1623)

Dear Ms. Cohan:

The California Project Directors Association submits the following comments on the Legal Services Corporation's proposed amendments to 45 CFR Parts 1606, 1618, and 1623. The California Project Directors Association is comprised of the eleven California programs funded by Legal Services Corporation: Bay Area Legal Aid, California Indian Legal Services, California Rural Legal Assistance, Central California Legal Services, Greater Bakersfield Legal Assistance, Inland Counties Legal Services, Legal Aid Foundation of Los Angeles, Legal Aid Society of Orange County, Legal Aid Society of San Diego, Legal Services of Northern California, and Neighborhood Legal Services of Los Angeles County.

The Project Directors Association (PDA) strongly urges the Legal Services Corporation (LSC) to not pursue the proposed rulemaking on provisions that would allow LSC to impose additional sanctions on grantees in certain circumstances. LSC has not demonstrated the need for these additional sanctions and the proposed rules do not provide programs a meaningful opportunity to challenge an adverse decision.

There is No Demonstrated Need for Additional Sanctions

LSC currently has powerful enforcement tools to ensure compliance with LSC requirements. LSC can require programs to perform corrective actions, require programs to perform certain actions through grant conditions, change funding to month-to-month, question any costs deemed to be contrary to LSC requirements, suspend funding for up to 30 days, reduce a grant from 5% to 100% (termination), debar a program from further receipt of funding, and decide not to refund a program during the competition process.

LSC has not made the case that additional tools are necessary, nor shown that a sanction of less than 5% is needed to enforce LSC requirements. LSC's own notice of proposed rulemaking states that the majority of LSC recipients are in substantial compliance with LSC requirements the majority of the time, and that when non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance. As no specific examples of non-compliance that would

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warrant the adoption of these additional sanctions are cited in the notice, it appears that they are proposed to address a problem that does not exist.

There is Significant Potential Harm to Clients

The proposed additional sanctions do not protect the interests of clients. The potential impact of the additional sanctions of less than five percent and the suspension of LSC funding for up to 90 days will have devastating impact on clients who turn to LSC for help in seeking basic human necessities, including access to safe housing and freedom from violence. Programs are already operating on very lean budgets due to the nearly 19% reduction in LSC funds over the past two years and the continued decreases in IOLTA funding. Suspension of LSC funding for up to 90 days could result in immediate closure for a program and cause devastating impact to families, children, and veterans. Impact to clients served by LSC-funded programs should be at the heart of every decision the Legal Services Corporation makes.

The Proposed Additional Sanctions Lack Adequate Due Process

The proposed rules suggest that a program may contest a proposed sanction or suspension by requesting an informal meeting with LSC within five business days and submitting additional documents within ten business days. Not only is the proposed process inadequate given the severity of the sanctions and potential for irreparable harm, there is nothing in the proposed rules to suggest that a neutral LSC employee will review the decision to impose sanctions. In fact, the same person who made the initial sanctioning decision might be the person reviewing it. Such a review process is completely meaningless and subject to abuse.

If LSC decides to move forward with these additional sanctions – despite the failure to show a need for them – LSC must provide adequate due process and a meaningful opportunity for a program to convince a neutral party that a decision to impose the sanctions is inappropriate. The Legal Services Corporation's mission to fulfill the promise of equal justice under the law mandates that its own regulations provide due process to ensure that its rules are applied fairly and without opportunity for abuse.

The California Project Directors Association appreciates the opportunity to comment on the proposed additional sanctions, and we strongly urge the Board of Directors of the Legal Services Corporation to consider the unnecessary and severe impact these additional sanctions would have on the very clients LSC exists to protect.

Respectfully,

The California Project Directors Association

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