

**Legal Aid Society**  
of Northeastern  
New York, Inc.

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September 6, 2012

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

Re: Further Notice of Proposed Rulemaking on Termination, Limited Reductions in Funding and Debarment Procedures; Recompensation; Enforcement; Suspension Procedures

Dear Mark:

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 offer the following comments to the Further Notice of Proposed Rulemaking on Termination, Limited Reductions in Funding and Debarment Procedures; Recompensation; Enforcement; Suspension Procedures published on August 8, 2012 in the Federal Register.

We appreciate the opportunity to comment on the proposed changes made to the January 31, 2012 Notice of Proposed Rulemaking (NPRM). We take notice and deeply appreciate that changes have been made in response to some of the concerns raised by us and by many others. However, we continue to oppose the creation of additional sanctions and increasing the possible suspension period from 30 to 90 days on the basis that they (1) are unsupported by any evidence of actual wrongdoing by recipients; (2) are not needed particularly given the current tools LSC has to require compliance; (3) will harm clients and applicants; (4) lack fundamental due process protection; (5) do not have appropriate standards for their application; and (6) were not recommended by the GAO or LSC Fiscal Oversight Task Force. We offer the following comments in response to the Further Notice of Proposed Rulemaking.

The LSC funded projects in New York State feel strongly that additional due process procedures and protections should be established prior to any imposition of the additional (less than 5%) sanction. We believe that LSC should require that a substantial violation as defined in 1606.2(h) shall mean a "knowing and willful violation that merits action under this Part based on consideration of the following criteria by the Corporation: (1) the number of restrictions or requirements violated; (2) whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of 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; and (4) the extent to which the recipient failed to take action to cure the violation when it became aware of the violation.



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In defining "knowing and willful violations" in 1606.2(b), we urge that LSC require that "the Recipient had actual knowledge of the fact that its action or lack thereof constitutes a violation and despite such knowledge undertook or failed to undertake the action. If a program has relied in good faith on a reasonable interpretation of state or federal law in taking action or inaction, a program will not be considered to have acted in a knowing and willful manner."

In addition, we feel strongly that additional due process protections should include the right of appeal to an independent, impartial hearing officer.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact Lillian Moy at [lmoy@lasnny.org](mailto:lmoy@lasnny.org) or at 518-689-6304.

Sincerely yours,



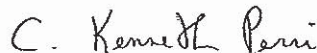
Barbara Finkelstein, Executive Director  
Legal Services of the Hudson Valley, Inc.



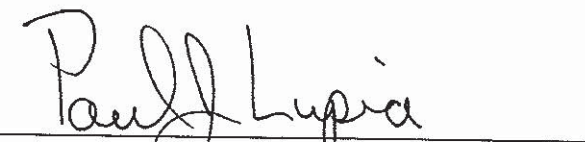
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