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SUBJECT: OIG Comments concerning Proposed Rulemaking with respect to Limited Reductions in Funding, Suspension, and Special Grant Conditions

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The Legal Services Corporation (LSC or the Corporation) Office of Inspector General (OIG) welcomes the proposed regulations contained in the Notice of Proposed Rulemaking because they would provide the Corporation with a more flexible set of enforcement mechanisms, allowing for a more systematic approach to grant oversight. Legal Services Corporation, Notice of Proposed Rulemaking, 77 Fed. Reg. 4749 (Jan. 31, 2012) (hereinafter "NPRM"). In April 2007, the OIG recommended that "the LSC Board of Directors issue a regulation allowing for additional sanctions, historically termed lesser sanctions, and other tools to induce grantee compliance." *See* Memorandum to the LSC Board Operations and Regulations Committee regarding OIG Recommendations to the Committee for its 2007 Regulatory Agenda at 3 (Apr. 27, 2007) (hereinafter "OIG Regulatory Recommendations"). The OIG's recommendation was subject to much debate and numerous hearings of the LSC Board and its committees. This lengthy process of deliberation has borne fruit. The OIG believes that the

NPRM addresses LSC's need for more flexible enforcement mechanisms in a way that reflects the refinements that emerged during the discussions and debate that led to its publication.

The proposed regulatory changes appropriately arise out of a recognition that LSC lacks a flexible range of enforcement options for dealing with noncomplying grantees, however rare such noncompliance may be. The OIG largely agrees with the assessment of LSC's existing enforcement mechanisms presented in the NPRM. In the experience of the OIG, LSC's existing suspension and termination regulations are rarely invoked, even in cases where they might be appropriate enforcement tools. As noted in the NPRM, LSC's current suspension regulation only permits a short term suspension the effects of which seldom outweigh the procedural burden LSC must bear to impose it. The OIG believes this shortcoming is exacerbated by the funding structure for LSC grants whereby grantees typically receive two months' funding in the first month of their grants. This funding structure makes it feasible for recalcitrant grantee to outwait a suspension without remedying the violation that occasioned it. With respect to termination, the OIG's experience is again consistent with the presentation in the NPRM. Termination is an enforcement mechanism rarely invoked by LSC. As noted in the NPRM, termination, even where warranted, is perceived to carry too high a cost in terms of disruption of client services throughout the large service areas that characterize the present landscape of LSC's grantees. The OIG would further observe that LSC's existing termination regulation imposes cumbersome procedural requirements, including notice, informal discussions, a formal, in-person hearing, a recommended decision, and, if requested, review by the president. These procedural hurdles make partial termination (*e.g.*, a five percent reduction in a grant) a less than desirable sanction for serious instances of noncompliance that do not by themselves warrant complete severance of the relationship between LSC and the non-complying grantee.

Based on its experience with LSC's existing enforcement mechanisms and its analysis of the NPRM, the OIG has concluded that the regulatory changes the Corporation has proposed will increase LSC's flexibility as a grant administrator and go a long way toward remedying the shortcomings identified above. The OIG is concerned that some of the proposed changes, particularly as they relate to suspension, fall somewhat short of the flexibility desirable for an efficient oversight and enforcement regime. Nevertheless, the OIG is pleased to endorse the NRPM, with limited exceptions. The OIG's observations in support of the Corporation's proposed regulatory changes and suggestions for improvement are contained below.

A. Limited Reductions in Funding

It has been repeatedly observed that LSC's termination rule is seldom applied even in cases of serious noncompliance because, in all but the very worst of cases, its penalties can be draconian and the procedural costs of imposing those penalties are high. Nor, in practice, has competition proved to be an adequate remedy for noncompliance. Given the large services areas covered by LSC grantees, it is often difficult to find competent organizations willing to compete for a noncomplying grantee's service area. What is more, absent the rare occurrence of a termination, competition does not offer LSC a mechanism for addressing serious noncompliance that calls for some form of sanction rather than mere corrective action when it occurs in the middle of a grant term. While there appears to be widespread compliance in the grantee community, in the OGI's estimation, LSC's grants remain subject to a real risk of serious noncompliance warranting some action short of outright termination. The OIG believes that the proposed text of 45 C.F.R. § 1606.15 would offer LSC an appropriate tool for addressing these instances of noncompliance when they occur and minimizing the risk of their occurrence prospectively through an appropriate level of deterrence.

In the OIG's analysis, the proposed text of 45 C.F.R. § 1606.15 would provide LSC with the opportunity to take a more flexible, graduated approach to enforcement. With the addition of this enforcement tool, LSC will be better able to match its response to noncompliance with the nature and severity of the noncompliance at issue rather than being forced to choose among a limited number of enforcement mechanisms none of which is well proportioned to serious noncompliance not warranting complete severance of the relationship with the grantee. That is, the proposed rule gives LSC options for addressing serious instances of noncompliance falling somewhere in the vast middle ground between corrective action plans, special grant conditions, and month-to-month funding, on the one hand, and outright termination on the other. In so doing, it gives fuller effect to the Congressional sentiment in favor of "remedial measures short of termination." H.R. Conf. Rep No. 93-247 (1974), *reprinted in* 1974 U.S.C.C.A.N. 3897, 3901. Importantly, the proposed rule also requires that monetary sanctions be proportional to the severity of the violation, directing LSC to base the magnitude of any limited reduction in funding on a well-defined set of criteria. 45 C.F.R. § 1606.15(c) (proposed in NPRM, 77 Fed. Reg. at 4753). Because it provides for sanctions proportionate to the severity of the noncompliance at issue, the proposed rule is likely to be more useful to LSC in its role as a grant administrator and less subject to the understandable disincentives that limit LSC's recourse to its current termination rule. The proposed rule is a less draconian enforcement mechanism than LSC's current termination rule and consequently more likely to be implemented where LSC faces the unfortunate task of responding to serious noncompliance.

The proposed text of 45 C.F.R. § 1606.15 remedies the other shortcoming that is commonly recognized as limiting the usefulness of LSC's termination rule, namely, its cumbersome, resource intensive procedural requirements. Where termination requires a lengthy

process, which includes a formal hearing and an appeal, limited reductions in funding would be imposed principally on the basis of a paper hearing. Such a paper hearing will still provide grantees with an adequate opportunity to be heard. While allowing for a rapid response to noncompliance, it will ensure that LSC is fully informed and weighs all relevant issues before making a final determination. In the OIG's analysis such a process combined with proportionality requirement written into the proposed rule would provide LSC with a fair and flexible mechanism for quickly and effectively addressing substantial violations of its regulations. As such, the OIG believes the proposed rule squarely addresses the concerns that originally lead it to recommend rulemaking in this area and, accordingly, recommends adoption of the proposal.

It is sometimes suggested that LSC's current termination and debarment rule provides an adequate mechanism for addressing substantial violations of LSC's regulations. The OIG does not believe that this suggestion bears up under scrutiny. Reliance on a single sanction would overlook the fact that even within the category of substantial noncompliance there can be gradations of severity. At bottom, it is unfair to invoke termination in all cases of substantial noncompliance. This reality is, no doubt, reflected in LSC's reluctance to invoke its termination rule even where, by its terms, it might apply. NPRM, 77 Fed. Reg. at 4750. Based on its experience, the OIG can envision at least two factual patterns where a limited reduction in funding might be warranted but termination would be excessive. First, a noncompliant grantee might commit a substantial violation of a politically sensitive regulation that threatens harm to the entire legal services community and puts LSC funding at risk even though the violation itself does not involve the expenditure of substantial LSC resources. For example, violations of this sort might include limited lobbying activity concerning controversial matters or certain

involvement in restricted litigation. Violations fitting this pattern would certainly call for a strong response from LSC but might not warrant termination because they are limited in scope. Second, a grantee might exhibit a pattern of ongoing, minor violations that certainly does not warrant termination but when viewed as a whole calls for more than a mere corrective action plan or a special grant condition. Violations of this sort might include repeated failure to institute certain financial controls or recurrent representation of ineligible clients. In cases like these, a limited reduction in funding might impress upon the grantee the seriousness of the recurrent violations and forestall greater problems that might arise if the violations were allowed to continue unchecked. There may well be other factual patterns not yet envisioned by the OIG or LSC that warrant a limited reduction in funding, but the OIG believes the proposed rule will provide LSC with the flexibility to address all such cases in a manner proportionate to their severity.

Contrary to the contentions of some in the legal services community, the proposed text of 45 C.F.R. § 1606.15 properly balances the need for process protections with a grant administrator's need for flexible, resource efficient enforcement mechanisms. As discussed above, it is generally recognized that the procedural requirements in LSC's current termination regulation make it burdensome to apply even where warranted and thereby limit its effectiveness as an enforcement mechanism. In 1997, Congress itself recognized the appropriateness of streamlined procedures when it replaced the requirement that grantees "be afforded a timely, full, and fair hearing ... conducted [upon request] by an independent hearing examiner" with the requirement that grantees be given "notice and an opportunity to be heard" prior to termination. Compare Appropriations Act of 1998, Pub. L. 105-119, 111 Stat. 2440 (Nov. 26, 1997) § 501(c)-(d) ("1998 Appropriations Act") with 42 U.S.C. § 2996j(2). Being less severe than termination,

the limited reductions in funding contemplated by the NPRM are naturally amenable to a more streamlined process.

Streamlined process protections are not, however the same thing as the absence of process altogether. One of the strengths of the proposal in the NPRM is that it includes reasonable process protections that are not unduly cumbersome. Specifically, the text of the proposed rule contains the following procedural requirements: (1) LSC must make a fact-based determination to impose a limited reduction in funding; (2) the basis for this determination must be communicated to the grantee in a writing that identifies the facts and documents on which LSC relied; (3) LSC must inform the grantee of any corrective action it could take to avoid the contemplated reduction in funding; (4) the recipient must be given the opportunity submit written materials in opposition to the contemplated reduction in funding; (5) the recipient may request an informal meeting to discuss the contemplated reduction in funding; (6) LSC must consider any written submission or oral communication that the grantee offers before it makes a final decision to impose a reduction in funding; and (7) LSC must inform the grantee of its final decision in writing. *See* 45 C.F.R. § 1606.15(c)-(g) (proposed in NPRM, 77 Fed. Reg. at 4753). By imposing transparency on LSC's decision making process and ensuring that LSC consider the case against any contemplated reduction in funding, these procedural requirements effectively guard against abusive, arbitrary, and/or mistaken application of the proposed rule. They do so while still allowing for "quick and effective" enforcement, one of the principal concerns that motivated the OIG's original recommendation concerning lesser sanctions. *See* OIG Regulatory Recommendations at 3.

There has also been some suggestion that the proposed text of 45 C.F.R. § 1606.15 would deprive grantees of needed funds and thereby adversely affect client services. This criticism of

appears to overlook the fact that the proposed rule establishes a nuanced approach to determining the magnitude of a reduction in funding and bases all such determinations on clearly defined criteria. The rule does not call for a limited reduction in funding of five percent of a recipients grant in all cases. Rather, it demands that any limited reduction in funding be proportional to the severity of the violation that occasions it: "A determination of whether there has been a substantial violation ..., and the magnitude of the limited reduction in funding, will be based on consideration of the criteria set forth in § 1606.3(b)." 45 C.F.R. § 1606.15(c) (proposed in NPRM, 77 Fed. Reg. at 4753). Presumably, a five percent reduction in funding would be limited to the most severe violations that trigger the rule, while less sever violations would lead to smaller reductions.

The concern that a limited reduction in funding would adversely affect client services also appears to mistake exactly what client services LSC funds are intended to support. LSC's governing statutes and regulations collectively define the population that Congress and the Corporation intends LSC grant money to benefit. Noncompliance with the statutes and regulations governing LSC grants by definition injures the population those grants are intended to benefit. Money spent in contravention of those laws and regulations, even if spent in pursuit of other worthy causes, is necessarily taken away from client services it was intended to support. A regulation that deters such misdirection of LSC funds and imposes a sanction should it occur promotes the sort of client service LSC funds are intended to support. In this regard, it should be noted that while noncompliant programs may suffer a reduction in funding under the proposed text of 45 C.F.R. § 1606.15, the funding is not lost to the client population as a whole but is rather redirected to compliant grantees who are using LSC's money as the law intends. Under the proposal in the NPRM, funds would be reallocated and directed to other grantees to support

basic field programs consistent with LSC's governing statutes and regulations. 45 C.F.R. § 1606.13(d) (proposed in NPRM, 77 Fed. Reg. at 4753).

In the OIG's analysis, the proposed text of 45 C.F.R. § 1606.15 would give LSC the flexibility to respond proportionally to substantial violations of its governing laws and regulations that merit some sanction but not necessarily outright termination. Further, it establishes procedural protections that are well structured to protect against mistake or abuse. The OIG believes that the proposed rule will fill a regulatory gap in LSC's enforcement regime that has limited LSC's ability to address such violations. For these reason and the reasons discussed above, the OIG recommends adoption of the proposed text of 45 C.F.R. § 1606.15.

B. Suspension

The OIG concurs in LSC's observation that the 30-day maximum suspension period permitted by its LSC's current rule, 45 C.F.R. 1623.4(e), has the effect of limiting the efficacy of suspension as an enforcement mechanism and discouraging LSC from invoking the rule where it might otherwise be appropriate: "LSC has determined that the resources required to pursue the suspension process would not be well invested given that, under the current regulations, any funds withheld would have to be released to the recipient at the end of the 30-day suspension period, regardless of whether the violation had been remedied." NPRM, 77 Fed. Reg. at 4750. The OIG further believes that LSC's practice of paying grantees two months in advance, coupled with the fact that many grantees have access to non-LSC sources of funding, exacerbates the shortcomings of the current suspension rule because, in some cases, it makes it feasible for a recalcitrant grantee to wait out the month-long maximum suspension without taking the steps necessary to address the problem that occasioned the suspension. Accordingly, the OIG is

generally supportive of LSC's proposal to lengthen the maximum suspension period, though it has reservations about the efficacy of the particular approach taken in the NPRM.

Not only is a lengthening of the maximum suspension period established by 45 C.F.R. 1623(e) "within LSC's current statutory authority," NPRM 77 Fed Reg. 4752, it also appears to more fully implement Congressional intent. As noted in the NPRM, the current maximum suspension period appears to derive from certain procedural protections contained in the Legal Services Corporation Act of 1974, 42 U.S.C. 2996j(2). In LSC's 1998 Appropriations Act, however, Congress repealed these protections as they applied to both termination and suspension. 1998 Appropriations Act, Pub. L. 105-119, 111 Stat. 2440 (Nov. 26, 1997) § 501(c). While Congress established alternative procedural requirements for termination, it did not specify an alternative maximum suspension period. *Id.* The decision to repeal the statutory maximum suspension period without establishing a new maximum period suggests a recognition of the need for flexibility in grant oversight. By declining to establish a new maximum suspension period, Congress cleared the way for a rule that ties the maximum suspension period to the grantee's conduct in each particular case rather than an artificial maximum period.

The OIG believes that any revision of LSC's current suspension rule should seek to maximize the efficacy of suspension as an enforcement mechanism while limiting the potential for disruption of client services. In the OIG's judgment, this is better done by a suspension rule that expressly ties the maximum suspension period to the conduct of the grantee than by a rule that sets a maximum period in terms of days, weeks, or months. Specifically, the OIG recommends that LSC reformulate its proposed revision to eliminate the proposed 90-day maximum suspension period and allow for indefinite suspension of noncompliant grantees pending corrective action. Not even the most recalcitrant grantee would be in a position to wait

out a suspension that expressly links the length of that suspension to corrective action and omits any other artificial limitation on the length of the suspension period. Under such a rule, a suspended grantee will know with certainty that its suspension will come to an end when, and only when, it takes action to remedy the violation upon which the suspension is premised. A rule of this sort would likely yield prompt corrective action and would, thereby, limit any disruption of client services to the minimum disruption required to obtain compliance with LSC's governing statutes and regulations. In no case would LSC find itself compelled by rule to release suspended funds "regardless of whether the violation [that occasioned the suspension] [has] been remedied," an outcome that is foreseeable under the current rule. NPRM, 77 Fed. Reg. at 4750.

It may be the true that longer suspension periods defined in terms of days, such as the 90-day maximum period proposed in the NPRM, tend toward establishment of a similar dynamic, but the OIG believes they will remain less effective in producing prompt corrective action because the maximum suspension period is not inextricably linked to the grantee's conduct. This is especially the case with grantees that receive substantial funding from non-LSC sources and are, consequently, likely to be at least marginally less responsive to LSC oversight. Part 1623 currently recognizes two legitimate aims of suspension: "safeguard[ing] LSC funds" and "ensure[ing] immediate corrective action." 45 C.F.R. § 1623.3(a). A suspension whose duration depends entirely on the grantee's willingness to take corrective action is inherently tied to these goals whereas a suspension limited to a maximum number of days is not.

Consistent with the OIG's position, the Federal Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, 2 C.F.R. Part 215, (hereinafter the "Common Rule") similarly defines the length of suspension in terms of the grantee's corrective action. The Common Rule applies to all

Federal agencies and establishes uniform rules for the administration of grants to non-profit organizations. 2 C.F.R. § 215.0(a)-(b). In the absence of a contravening statutory provision, all non-profit recipients of federal grant money operate under these uniform rules. 2 C.F.R. §§ 215.0(b)(2), 215.0 (d)(3). While LSC, as a nonprofit grant making entity, is not subject to the Common Rule, that rule still provides persuasive guidance because it represents the judgment of a major grant making entity with which LSC shares a common source of funding.

The Common Rule contains two enforcement mechanisms that resemble suspension as LSC has defined it, namely, suspension and temporary withholding of funds. As used in the Common Rule, suspension "means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency." 2 C.F.R. § 215.2(ii). Agencies subject to the Common Rule are also permitted to "temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action ...."[1] 2 C.F.R. § 215.62(a)(1). Neither of these enforcement mechanisms establishes an artificial period of maximum duration. Both are imposed pending corrective action by the grantee or adoption of more severe enforcement action by the grant administrator.

It has been suggested that a rule providing for suspension pending corrective action, or indeed a lengthy suspension defined in a terms days, would put undue pressure on a grantee to conform to LSC's interpretation of its own regulations. On this view, a grantee may justifiably decide to wait out a 30-day suspension when it disagrees with LSC's interpretation of governing rules, and a longer suspension period would deprive grantees of this option. The OIG believes

[1] In the Common Rule, suspension and temporary withholding of funds appear to differ from one another principally in their effect on allowable costs. This difference is not immediately relevant to LSC's revision of its own suspension rule or the OIG's recommendations concerning that revision. 2 C.F.R. § 215.62(c).

that this objection to a lengthening of the maximum suspension period fundamentally misunderstands LSC's role as a grant administrator. LSC is charged with overseeing the grants that it makes and ensuring that its grantees comply with applicable statutes and regulations. 42 U.S.C. § 2996e(b)(1)(A) ("The Corporation shall have authority to insure the compliance of recipients ... with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter ...."); Appropriations Act of 1996, Pub. L. 104-134, 110 Stat. 1321 (Nov. 26, 1997) § 504(a) ("None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity ....") In order to enforce its regulations, LSC must be in a position to exercise reasonable judgment as to their meaning and act on that judgment. Retaining a suspension rule that enables grantees to wait out a suspension and persist in what LSC has determined to be noncompliance would be tantamount to allowing grantees to opt out of LSC's grant oversight regime, at least with respect to compliance issues that implicate the safety of LSC funds or required immediate corrective action. See 45 C.F.R. § 1623.3(a) (describing the cases in which suspension is appropriate). From time to time, it may well be prudent to consult the grantee community when interpreting particularly sensitive regulations. Nevertheless, where LSC's interpretations of its own regulations meet a minimum standard of reasonableness, the Corporation is certainly not required to defer to a grantee's contravening interpretation by allowing a grantee to thwart enforcement efforts. *See* 33 Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 8353 (2011) (collecting authority for the long recognized standing rule that courts owe great deference to an agency's interpretation of its own regulations). A rule that in effect defers to grantee interpretations in matters that call for steps to safeguard LSC funds or require immediate corrective action undermines LSC's capacity for effective grant oversight. In revising

its suspension rule, LSC should be conscious of its responsibilities as a grant administrator and seek to put itself in a better position to enforce compliance with applicable regulations as the Corporation itself interprets them.

For this reason and the reasons stated above, the OIG supports LSC's efforts to extend the maximum duration of suspensions imposed under Part 1623 but believes that a rule providing for suspension pending corrective action would better accomplish the goals of suspension as identified in LSC's existing regulations.

C. Special Grant Conditions

The OIG does not object to an amendment of 45 C.F.R. Part 1618 to make explicit LSC's authority to impose special grant conditions during a grant year. The OIG has previously explained its belief that LSC already possesses the authority to impose such grant conditions and that an amendment of the sort proposed in the NPRM is superfluous. LSC has the inherent authority to enforce compliance with all applicable rules and laws. 42 U.S.C. §2996e(b)(1)(A). The OIG believes that this authority extends to the imposition of grant conditions during a grant year. At most, the OIG believes that LSC would need to modify the wording of Grant Assurance Number 1 in its LSC Grant Assurances for Calendar Year 2012 Funding and subsequent years to fully avail itself of this authority. Recognizing this, the NPRM provides: "Although [the imposition of special grant conditions during a grant year] is an action LSC might be able to take without rulemaking, LSC is invoking the rulemaking process to provide an opportunity for public comment on this proposal." Because the NPRM acknowledges LSC's inherent authority in this area, the OIG does not find fault with LSC's decision to exercise that authority through the regulatory process.

Even so, the OIG is somewhat concerned that the proposed text of 45 C.F.R. § 1618.5(b) may unduly constrain LSC's recourse special grant conditions, thereby limiting its flexibility in enforcement matters. Specifically, the proposed text appears to limit the imposition of special grant conditions to two narrowly drawn cases: (1) persistent or intentional violation of the LSC Act and (2) "failure to take appropriate remedial or disciplinary action to ensure compliance by [grantee] employees with the Act." The OIG is not prepared to say whether these two cases adequately capture all circumstances in which special grant conditions would prove to be a useful mechanism for monitoring ongoing corrective action, forestalling future noncompliance, and safeguarding grant funds. For example, even where a grantee takes appropriate corrective action, LSC may want to formalize that action by means of a special grant condition in high risk cases. LSC may also wish to impose specific reporting requirements *via* special grant condition to more effectively monitor grantee compliance going forward. Accordingly, the OIG would encourage LSC to explore alternative language that would link the imposition of special grant conditions more directly with the goals that special grant conditions are intended to achieve. The OIG believes that such language would provide LSC with greater flexibility in its grant oversight activities.

D. Conclusion

The OIG thanks the Board of Directors for the opportunity to submit comments concerning LSC's regulatory proposals to provide for limited reductions in funding, a lengthening of the maximum suspension period permitted by 45 C.F.R. § 1623.4(e), and the imposition of special grant conditions during a grant year. The OIG is hopeful that its comments will assist the Corporation as it moves forward with rulemaking in this area. Over the last five years, regulatory action aimed at enhancing LSC's enforcement flexibility has been the subject

of extensive deliberation within the Corporation and the wider community of stakeholders.[2] The OIG believes that the deliberative nature of this regulatory process is reflected in the quality of the NPRM that the Corporation ultimately decided to publish. The time is ripe for regulatory action on this proposal. Subject to the above discussed recommendations for improvement of the proposed amendments to 45 C.F.R. Parts 1618 and 1623, the OIG recommends adoption of the regulations proposed in the NPRM, 77 Fed Reg. 4752-54.

[2] Since the OIG's April 2007 recommendation concerning lesser sanctions, the Operations and Regulations Committee has discussed or received substantive briefings concerning regulation in this area on ten separate occasions, six of which included input from stakeholders within the grantee community and one of which included a briefing from the Office of Compliance and Enforcement concerning the compliance enforcement process. The complete Board of Directors substantively considered lesser sanctions on three occasions, excluding routine reports from the Operations and Regulations Committee. At the direction of the Board, Management conducted a day-long rulemaking workshop attended by representatives of five grantees, the Center for Law and Social Policy, National Legal Aid and Defender's Association, and two client representatives. Management and the OIG have collectively provided the Board and its committees with at least six memoranda related to the issue of lesser sanctions, including the OIG's Regulatory Recommendations. Management also produced three Rulemaking Options Papers and three draft Notices of Proposed Rulemaking, including the notice published in January of this year. The Corporation received at least one set of written comments from the American Bar Association on an unpublished draft of a Notice of Proposed Rulemaking.