



## ENFORCEMENT MECHANISMS

### PROGRAM LETTER 15-3

March 31, 2015

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## LSC PROGRAM LETTER 15-3—ENFORCEMENT MECHANISMS

### I. Overview

#### A. Purpose

This program letter provides an overview of LSC policies for enforcement actions that LSC may take in the event of grantee noncompliance with the terms and conditions of a grant. The program letter explains general practices of LSC, but it does not limit LSC's discretion to make decisions that are otherwise permissible under the LSC statutes and regulations.

#### B. Scope

This program letter describes the LSC regulations covering enforcement mechanisms to provide guidance to LSC grantees regarding the operation of these regulations. This program letter summarizes the major provisions of the following regulations to organize and explain them (but does not include every detail set forth in each of the regulations summarized).

- Enforcement procedures generally—45 C.F.R. Part 1618
- Suspensions of funding—45 C.F.R. Part 1623
- Limited reductions of funding (less than 5% of the grant)—45 C.F.R. Part 1606
- Terminations (5% of the grant or greater)—45 C.F.R. Part 1606
- Debarment—45 C.F.R. Part 1606

This program letter does not address the disallowed costs procedures of 45 C.F.R. Part 1630, which involve recovering grant funds.

#### C. Covered grants

This program letter applies to LSC grants or contracts provided under section 1006(a)(1)(A) of the LSC Act to LSC recipients for the purpose of providing legal assistance to eligible clients. Those grants include Basic Field—General, Basic Field—Migrant, and Basic Field—Native American. 42 U.S.C. § 2996e(a)(1)(A). The LSC Act and regulations define “LSC recipients” as grantees or contractors receiving “annualized funding from LSC granted under section 1006(a)(1)(A) [of the LSC Act] for the direct delivery of legal assistance to eligible clients.” 42 U.S.C. § 2996a(6); 45 C.F.R. § 1600.1. This program letter will also refer to all covered entities as “grantees” for convenience. Please note that some LSC grants are subject to different enforcement procedures. For example, termination procedures for LSC Technology Initiative Grants appear at <http://tig.lsc.gov/grants/compliance>.

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### D. LSC offices

The following LSC offices are referred to in this program letter.

- OCE—Office of Compliance and Enforcement
- OPP—Office of Program Performance
- OIG—Office of Inspector General
- OLA—Office of Legal Affairs

### E. Comparison of procedures

Attached to this program letter is a table comparing these enforcement mechanisms. 78 Fed. Reg. 10087 (Feb. 13, 2013). To summarize, suspension procedures are the shortest and least formal. Terminations and debarments use identical procedures that include a right to a hearing before an impartial decision maker. Limited reductions of funding use the same basic procedures as terminations, but do not include the right to a hearing and are subject to some different deadlines.

## II. Oversight and Enforcement

LSC oversees grantee compliance with all LSC rules and restrictions, many of which are statutorily mandated. Although LSC is not a federal agency, it provides grants with funds appropriated by Congress. LSC and its grantees are accountable for ensuring that those funds are spent responsibly and only for allowable activities. These enforcement mechanisms are designed to enable LSC to take timely and effective action to deal with issues of noncompliance while protecting the provision of legal services to eligible clients and providing appropriate levels of due process for grantees. LSC can choose the enforcement mechanism best suited to the situation.

Enforcement is an integral part of LSC's overall grants management oversight process and includes review of the grantee's programmatic operations, compliance with rules and requirements, and financial management. LSC works with grantees to identify problems and provide opportunities for correction. Often, grantees are able to implement corrective actions and/or comply with special grant conditions without LSC's initiating an enforcement action. Furthermore, the enforcement procedures include an early opportunity for resolving compliance concerns through an informal conference at which the grantee and LSC may seek to narrow the issues and explore possibilities of settlement or compromise. They also include opportunities for the grantee to implement corrective actions, when appropriate, in lieu of LSC's imposing a sanction. Nonetheless, LSC may impose sanctions when necessary to respond to noncompliance or to compel corrective actions to end noncompliance. Additionally, LSC may impose special grant conditions requiring implementation of corrective actions and related monitoring and reporting.

Compliance is a significant factor in the grant competition process. Based on compliance or programmatic concerns, LSC may decide not to award a grant to a particular entity or to award a grant with a shorter than normal funding term (*e.g., 12 months, 6 months, 3 months, or monthly*), while addressing compliance or programmatic concerns.

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### III. Enforcement Actions Generally

#### A. LSC requirements

Suspensions, limited reductions of funding, terminations, and debarments involve compliance with the LSC requirements as defined at 45 C.F.R. § 1618.2:

*LSC requirements* means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

#### B. Substantial noncompliance, substantial violations, and substantial failures

There are two categories of *substantial noncompliance* that apply to sanctions:

- *substantial violations* of the LSC requirements, for which *all sanctions are available*,
- or*
- *substantial failures* to provide high quality, economical, and effective legal assistance, for which *terminations are available—LSC cannot suspend funds or impose limited reductions of funding* for substantial failures.

45 C.F.R. §§ 1606.2 (definitions), 1606.3 (grounds for termination or limited reduction of funding), 1606.4 (grounds for debarment), 1623.3 (grounds for suspension).

1. “*Substantial violation* means a violation [of the LSC requirements] that *merits action* [under the LSC regulations] based on *consideration of* the following criteria by the Corporation:
  - a. The *number* of restrictions or requirements violated;
  - b. 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;
  - c. The extent to which the violation is part of a *pattern of noncompliance* with LSC requirements or restrictions;
  - d. The extent to which the recipient *failed to take action to cure* the violation when it became aware of the violation; and
  - e. Whether the violation was *knowing and willful*.”

45 C.F.R. § 1606.2 (emphasis added). Although LSC must consider all of the criteria, LSC may take enforcement action even when only some of the criteria are met. For example, knowing and willful violations of substantive restrictions by senior staff at a grantee may merit a limited reduction of funding.

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2. *Substantial failure* means “a substantial failure by the recipient to provide *high quality, economical, and effective legal assistance*, as measured by:
  - a. generally accepted professional standards [such as the ABA Standards for the Provision of Civil Legal Aid],
  - b. the provisions of the LSC Act or LSC appropriations,
  - c. or a rule, regulation, including 45 CFR 1634.9(a)(2) [grant selection criteria], or guidelines or instructions issued by the Corporation.”45 C.F.R. § 1606.3(a)(2) (emphasis and lettering added).

### C. Part 1618 requirements

45 C.F.R. § 1618.5 sets forth the following steps regarding enforcement actions (emphasis and outline formatting added).

1. “Whenever the Corporation learns that there is
  - a. *reason to believe* that a recipient or a recipient's employee *may have committed a violation*,
  - b. the Corporation *shall*
    - i. *investigate* the matter promptly  
*and*
    - ii. *attempt to resolve it through informal consultation* with the recipient.”
2. LSC may proceed to take an enforcement action when there is “*substantial reason to believe* that a recipient *has persistently or intentionally violated* the LSC requirements, *or after notice*, a recipient has *failed to take appropriate remedial or disciplinary action* to ensure compliance by its employees with the LSC requirements, *and attempts at informal resolution* have been *unsuccessful*.”  
45 C.F.R. § 1618.5(a)–(b) (emphasis added).

## IV. Suspensions

Suspensions are the most immediate sanction. LSC can suspend funding in whole or in part. 45 C.F.R. § 1623.2. The procedures for initiating a suspension can be completed in less than *20 business days*. 45 C.F.R. § 1623.4(b)–(g). The suspension can take effect as early as the next scheduled grant payment after the grantee receives the final determination of suspension. 45 C.F.R. § 1623.4(g). Suspended funds are provided to the grantee at the end of the suspension. 45 C.F.R. § 1623.6(b).

LSC may temporarily suspend a grant, in whole or in part, for up to 90 calendar days. 45 C.F.R. § 1623.4(j). Only suspensions based on the failure to submit an acceptable audit may last for more than 90 calendar days. 45 C.F.R. §§ 1623.3(b), 1623.4(k). Audit-based suspensions may last until completion of an acceptable audit. 45 C.F.R. § 1623.4(k).

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For non-audit-based suspensions, grantees may appeal the suspension to the LSC President after the first 30 calendar days. 45 C.F.R. § 1623.4(h).

A suspension will end if LSC initiates termination proceedings against the grantee. 45 C.F.R. § 1623.2.

Ordinarily, LSC will issue a final determination of suspension within 30 days of initiating the suspension procedures. LSC can extend deadlines and take longer to complete the process. 45 C.F.R. § 1623.5(a), (c).

### A. Grounds for suspension

1. LSC may initiate a *non-audit-based* suspension when it determines that:

a. there has been a *substantial violation* of the LSC requirements (as defined at 45 C.F.R. § 1606.2 and discussed above)

*and*

b. LSC has *reason to believe* that *prompt action is necessary* to:

i. safeguard LSC funds

*or*

ii. ensure that the grantee takes immediate corrective action necessary for compliance with the LSC requirements.

45 C.F.R. § 1623.3(a).

2. LSC may initiate an *audit-based* suspension when:

a. the grantee has failed to have an acceptable audit under the OIG's audit guidance

*and*

b. the OIG has recommended suspension.

45 C.F.R. § 1623.3(b).

### B. Proposed determination of suspension

LSC commences suspension procedures by serving a written proposed determination of suspension on the grantee stating:

1. the *grounds* and *effective date* for the proposed suspension;

2. any *facts or documents relied upon* as justification for the suspension;

3. what, if any, prompt corrective action the grantee can take to avoid or end the suspension;

4. that, within 5 business days, it may request an informal meeting with LSC about the suspension; and

5. that, within 10 business days, it may submit written materials in opposition to the proposed suspension.

45 C.F.R. § 1623.4(b).

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### C. Informal meeting

If requested by the grantee, LSC will hold an informal meeting with the grantee within 5 *business days* of the request. At the informal meeting, both LSC and the grantee will have an opportunity to state their cases, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials. 45 C.F.R. § 1623.4(c)–(e).

### D. Final determination of suspension

Based on the informal meeting and/or written materials, LSC will determine whether the compliance concern can be resolved without a suspension. If LSC decides to suspend funding, then it will provide the grantee with a written final determination containing a summary of the issues raised in the informal conference and presented in any written materials. 45 C.F.R. § 1623.4(f).

### E. Suspension appeals

Grantees *cannot immediately appeal* final determinations of suspension.

For *non-audit-based suspensions*, a grantee can appeal the suspension *after* the suspension has been in effect for *30 calendar days or more*.

For *audit-based suspensions*, there is *no appeal*.

Appeals of suspensions are directed to the LSC President. 45 C.F.R. § 1623.4(h). The President or another senior LSC employee will review the appeal; the person doing so must have had no prior involvement in the suspension proceedings. 45 C.F.R. § 1623.4(a), (h).

1. The appeal must be in writing and must state, in detail, the reasons for seeking review.
2. The LSC decision on appeal will be based on the record of the suspension proceedings, including any additional materials that LSC requests. The grantee will have an opportunity to respond to those additional materials.
3. LSC will affirm, modify, or terminate the suspension within 15 calendar days of receipt of the appeal.

45 C.F.R. § 1623.4(h).

## V. Limited Reductions of Funding

LSC may impose a limited reduction of funding, whereby it reduces the grant for the current grant year by less than 5%. Limited reductions of funding affect only the current year's funding. 45 C.F.R. § 1606.2. LSC may determine whether to impose the reduction in one payment, prorated over many months, or by any other means. 45 C.F.R. § 1606.13(d). The amount of the reduction is measured by the total grant for the year, regardless of when the reduction occurs. Thus, a reduction of 4% of the total grant for the year could cause a reduction in a single month's payment of 60%. Alternately, a

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reduction of 4% imposed at the beginning of a grant year could be applied as a 4% reduction of each month's payment throughout the entire grant year.

Limited reductions of funding can be imposed within approximately three months of the initial notice, presuming all appeals are requested.

### A. Grounds for a limited reduction of funding

LSC may initiate a limited reduction of funding when it determines that:

1. There has been a *substantial violation* of the LSC requirements (as defined at 45 C.F.R. § 1606.2 and discussed above)
2. that occurred *less than five years prior* to the notice initiating the limited reduction of funding proceedings.

45 C.F.R. § 1606.3(b).

### B. Preliminary determination for a limited reduction of funding

1. The limited reduction of funding proceedings begin with a *written notice* provided to:
    - a. the grantee (*e.g.*, the Executive Director) *and*
    - b. the Chair of the grantee's governing body.
- 45 C.F.R. § 1606.6(a).
2. The written notice will:
    - a. *State the substantial violation* that constitutes the grounds for the proposed action (as defined at 45 C.F.R. § 1606.2 and discussed above);
    - b. *Identify*, with reasonable specificity, any *facts or documents* relied upon as justification for the proposed action;
    - c. *Inform* the grantee of the proposed *amount* and proposed *effective date* for the proposed action;
    - d. *Advise* the grantee of its *procedural rights* for review of the proposed action under this part;
    - e. *Inform* the grantee of its right to receive *interim funding* pursuant to §1606.13 of this part;
    - f. *Specify* what, if any, *corrective action* the grantee can take to avoid the proposed action; and
    - g. *Summarize prior attempts*, if any, for resolution of the substantial noncompliance.

45 C.F.R. § 1606.6(a).

3. A grantee may challenge the proposed limited reduction of funding as described below. If the grantee does not do so, then LSC may issue a final decision with *no further avenues for appeal or review under the regulation*. 45 C.F.R. § 1606.6(b).



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### C. Corrective action

LSC may provide the grantee with the option of accepting an LSC-specified corrective action to prevent the limited reduction of funding. 45 C.F.R. § 1606.6(a)(6).

A grantee that attempts to implement a corrective action *cannot also request an informal conference or submit written materials in opposition to the preliminary determination.*

1. The grantee has *10 business days* to submit a draft compliance agreement that:
  - a. accepts the terms of the corrective action proposed by LSC,  
*and*
  - b. includes *both* an implementation plan and an implementation timeline.

45 C.F.R. § 1606.7(a)(1).

2. If the grantee implements the corrective action to the satisfaction of LSC, then LSC will withdraw the preliminary determination as provided in 45 C.F.R. § 1606.7(a)(2)–(3).
3. If LSC determines at any time that the grantee has not presented an acceptable compliance agreement or met the corrective action requirements then LSC will:
  - a. notify the grantee in writing;
  - b. within 15 calendar days of that notice, modify or affirm the preliminary decision as a draft final decision; and
  - c. summarize in the draft final decision the attempts at resolution.

45 C.F.R. § 1606.7(a)(4).

4. The grantee has *10 business days* to appeal the draft final decision for a limited reduction of funding to the LSC President or designee. 45 C.F.R. § 1606.10(b) (described below).

### D. Informal conference or written materials in opposition to the preliminary determination

1. If a grantee *does not attempt corrective action* under 45 C.F.R. § 1606.7(a), then the grantee may challenge the preliminary determination for a limited reduction of funding by submitting to LSC *within 10 business days*:
  - a. a request for an informal conference,  
*or*
  - b. written materials in opposition to the preliminary determination,  
*or*
  - c. both.

45 C.F.R. § 1606.7(b).

2. Within *5 business days*, LSC will notify the grantee of the time and place of the conference. 45 C.F.R. § 1606.7(c).

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3. The informal conference will be held pursuant to 45 C.F.R. § 1606.7(c)–(f). At the informal conference, both LSC and the grantee will have an opportunity to state their cases, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.
4. LSC will issue a draft final decision to modify, withdraw, or affirm the preliminary determination. 45 C.F.R. § 1606.7(f).
  - a. LSC will do so within 15 calendar days of either: (i) the informal conference, or (ii) the receipt of written materials if there is no informal conference. 45 C.F.R. § 1606.7(f).
  - b. That decision will become final if the grantee does not request review by the LSC President. 45 C.F.R. § 1606.10(a).

### E. Appeal of a draft final decision to impose a limited reduction of funding

1. *Within 10 business days*, the grantee may appeal the draft final decision to the LSC President. 45 C.F.R. § 1606.10(b).
2. The President or another senior LSC employee will review the appeal; the person doing so must have had no prior involvement in the suspension proceedings. 45 C.F.R. §§ 1606.5(b), 1606.10(d).
3. The LSC decision on appeal will be based on the record of the proceedings, including any additional materials that LSC requests. The grantee will have an opportunity to respond to those additional materials. Upon request, LSC will provide a copy of the administrative record to the grantee. 45 C.F.R. § 1606.10(c).
4. *Within 30 days* after receiving the request for review, the LSC President or other senior LSC employee will adopt, modify, or reverse the draft decision as the final decision, which cannot be appealed. LSC may also direct further consideration of the matter. 45 C.F.R. § 1606.10(e).

## VI. Terminations

Part 1630 authorizes two types of terminations using the same procedures:

- full termination of the grant,  
*or*
- “partial termination” that reduces the grant funds by 5% or more but continues the grant with the remaining funding.

A full termination will end the grant. 45 C.F.R. § 1606.2. LSC will determine the best way to close out the grant and recompute the service area while taking all practical steps to ensure the continued provision of legal assistance in the service area. 45 C.F.R. §§ 1606.14, 1634.11.

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A partial termination can apply to the current year of the grant or to multiple years, up to the full grant term. 45 C.F.R. § 1606.2. LSC may determine whether to apply the termination to one payment, prorated over many months, or by any other means.

45 C.F.R. § 1606.13(d). For example, a partial termination of 10% of a grant for the current grant year could be applied over two months, which would reduce the payment for each month by 60%. Alternatively, a 10% reduction could be applied uniformly to each month's payment over the entire grant year.

Terminations include the right to a hearing before an impartial decision maker. 45 C.F.R. § 1606.8. Terminations have multiple stages and can take six months or more to complete.

### A. Grounds for a termination

LSC may initiate a termination when it determines that there has been *substantial noncompliance* with the LSC requirements, because:

1. there has been
  - a. a *substantial violation* of the LSC requirements (as defined at 45 C.F.R. § 1606.2 and discussed above)
  - b. that occurred *less than five years prior* to the notice initiating the termination proceedings,

*or*
2. there has been a *substantial failure by the grantee to provide high quality, economical, and effective legal assistance* (as defined at 45 C.F.R. § 1606.3(a)(2) and discussed above).

45 C.F.R. § 1606.3(a)(1)–(2).

### B. Preliminary determination for a termination

1. The termination proceedings begin with a *written notice* provided to:
  - a. the grantee (*e.g.*, the Executive Director) *and*
  - b. the Chair of the grantee's governing body.

45 C.F.R. § 1606.6(a).
2. The written notice will:
  - a. *State the substantial noncompliance* that constitutes the grounds for the proposed action (involving a *substantial violation* or a *substantial failure* as discussed above);
  - b. *Identify*, with reasonable specificity, any *facts or documents* relied upon as justification for the proposed action;
  - c. *Inform* the grantee of the proposed *amount* and proposed *effective date* for the proposed action;
  - d. *Advise* the grantee of its *procedural rights* for review of the proposed action under this part;

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- e. *Inform* the grantee of its right to receive *interim funding* pursuant to § 1606.13 of this part;
- f. *Specify* what, if any, *corrective action* the grantee can take to avoid the proposed action; and
- g. *Summarize prior attempts*, if any, for resolution of the substantial noncompliance.

45 C.F.R. § 1606.6(a).

3. A grantee may challenge the proposed termination as described below. If the grantee does not do so, then LSC may issue a final decision with *no further avenues for appeal or review under this part*. 45 C.F.R. § 1606.6(b).

### C. Alternate avenues for appeal

For terminations, grantees have two different paths for appeal. The grantee always has a right to request a hearing before an impartial hearing examiner. The grantee can directly request that hearing as discussed in paragraph VI.F, below. Alternatively, the grantee may first accept LSC's proposed corrective action plan (if provided), participate in an informal conference, or submit written materials for LSC's consideration. Those options are discussed in paragraphs VI.D and E below. Thereafter, the grantee can request a hearing before an impartial hearing examiner. 45 C.F.R. § 1606.7.

### D. Corrective action (if available)

If LSC proposes a corrective action to prevent the termination, then the grantee may attempt to implement that proposed corrective action. 45 C.F.R. § 1606.7(a).

A grantee that attempts to implement a corrective action *cannot also request an informal conference or submit written materials in opposition to the preliminary determination*. 45 C.F.R. § 1606.7(a).

1. The grantee has *10 business days* to submit a draft compliance agreement under the procedures at 45 C.F.R. § 1606.7(a)(1).
2. If the grantee implements the corrective action to the satisfaction of LSC, then LSC will withdraw the preliminary determination. 45 C.F.R. § 1606.7(a)(2)–(3).
3. If LSC determines at any time that the grantee has not presented an acceptable draft agreement or met the corrective action requirements, then LSC will:
  - a. notify the grantee in writing;
  - b. within *15 calendar days* of that notice, modify or affirm the preliminary decision as a *draft final decision*; and
  - c. summarize in the draft final decision the attempts at resolution.

45 C.F.R. § 1606.7(a)(4).

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4. The grantee has *10 business days* to appeal the draft final decision to the LSC President. 45 C.F.R. § 1606.10(b) (described below).
- E. Informal conference or written materials in opposition to the termination*
1. If a grantee does not attempt corrective action under 45 C.F.R. § 1606.7(a), then the grantee may challenge the preliminary determination for a termination by submitting to LSC *within 30 calendar days*:
    - a. a request for an informal conference,  
*or*
    - b. written materials in opposition to the preliminary determination,  
*or*
    - c. both.45 C.F.R. § 1606.7(b).
  2. Within *5 business days*, LSC will notify the grantee of the time and place of the conference. 45 C.F.R. § 1606.7(c).
  3. The informal conference will be held pursuant to 45 C.F.R. § 1606.7 (c)–(f). At the informal conference, both LSC and the grantee will have an opportunity to state their cases, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.
  4. LSC will issue a *draft final decision* to modify, withdraw, or affirm the preliminary determination.
    - a. LSC will do so within *15 calendar days* of either (i) the informal conference, or (ii) the receipt of written materials if there is no informal conference. 45 C.F.R. § 1606.7(f).
    - b. That decision will become final if the grantee does not request review by the LSC President. 45 C.F.R. § 1606.10(a).
- F. Appeal for a hearing before an impartial hearing examiner*
1. The grantee may request a hearing before an impartial hearing examiner. 45 C.F.R. § 1606.8. There are two options for doing so, as discussed in paragraph VI.C, above, with the following deadlines to request a hearing:
    - a. *30 calendar days* to request a hearing to *directly appeal the preliminary determination*, described in paragraph VI.B, above, and at 45 C.F.R. § 1606.6;  
*or*
    - b. *15 calendar days* to request a hearing to review a draft final decision issued after consideration of *corrective actions, an informal conference, or submitted written materials*, as described in paragraphs VI.D and E, above, and at 45 C.F.R. § 1606.7.

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2. *Within 10 business days after LSC receives a request for a hearing*, LSC will notify the grantee in writing of the date, time, and place of the hearing and the names of the hearing officer and of the attorney who will represent LSC. 45 C.F.R. § 1606.8(b).
  - a. The hearing will be scheduled for the earliest appropriate date, which ordinarily will be within 30 calendar days of the request. 45 C.F.R. § 1606.8(d).
  - b. The hearing procedures are described at 45 C.F.R. § 1606.8(e)–(l).
  - c. The impartial hearing officer must not have been involved in the current termination action and must be a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding. The hearing officer may be an LSC employee. 45 C.F.R. § 1606.8(c).
3. *Within 20 calendar days* of the conclusion of the hearing, the hearing officer will issue a *written recommended decision* to adopt, modify, or reverse LSC’s proposed termination, which will contain findings and the reasons for the decision. Findings will be based solely on the record, evidence adduced at the hearing, and matters subject to official notice. 45 C.F.R. § 1606.9.
4. If neither the grantee nor LSC appeals the recommended decision within *10 business days*, then it will be issued as a final decision with no further appeals. 45 C.F.R. § 1606.10(a).

### G. Appeal of a hearing officer’s recommended decision for termination

1. *Within 10 business days after the grantee’s receipt of the hearing officer’s recommended decision*, the grantee or LSC may appeal the hearing officer’s recommended decision to the LSC President. 45 C.F.R. § 1606.10(b).
2. The President will review the appeal. Unlike appeals of suspensions and limited reductions of funding, appeals of terminations permit the President to have been involved in the prior termination proceedings because the hearing officer provides the opportunity for impartial review. 45 C.F.R. § 1606.10(d).
3. The decision on appeal will be based on the record of the proceedings, including any additional materials that LSC requests. The grantee will have an opportunity to respond to those additional materials. Upon request, LSC will provide a copy of the administrative record to the grantee. 45 C.F.R. § 1606.10(c).
4. *Within 30 days* the President will adopt, modify, or reverse the draft decision as the final decision, which cannot be appealed. The President may also direct further consideration of the matter. 45 C.F.R. § 1606.10(d)–(f).

## LSC PROGRAM LETTER 15-3—ENFORCEMENT MECHANISMS

### VII. Debarments

LSC may debar a grantee for up to six years from receiving an LSC grant or LSC funds from another LSC grantee. 45 C.F.R. §§ 1606.2, 1606.11(d).

#### A. Grounds for debarment

1. LSC may initiate debarment proceedings on a *showing of good cause*. 45 C.F.R. § 1606.4(a).
2. *Good cause* means any of the following five occurrences:
  - a. *Summary termination* of financial assistance to the grantee through 45 C.F.R. Part 1640 based on violation of federal law relating to the proper use of federal funds;
  - b. *Termination of financial assistance in whole* of the most recent grant or contract of financial assistance under 45 C.F.R. § 1606.3;
  - c. *Substantial violation* (as defined at 45 C.F.R. § 1606.3(a)(2) and discussed above) by the grantee of the *restrictions delineated in 45 C.F.R. § 1610.2(a) and (b)* (listed below) that occurred *less than five years prior* to the notice initiating the debarment proceedings;
  - d. *Knowing entry* by the grantee into:
    - i. *Any agreement or arrangement with an entity debarred* by LSC during the period of debarment if so precluded by the terms of the debarment, including, but not limited to, a subgrant, subcontract, or other similar agreement; or
    - ii. *An agreement for professional services with an independent public accountant or other auditor debarred* by LSC during the period of debarment if so precluded by the terms of the debarment; or
  - e. The filing of a lawsuit by a grantee, provided that the lawsuit:
    - i. Was filed on behalf of the grantee as plaintiff, rather than on behalf of a client of the grantee;
    - ii. Named LSC, or any agency or employee of a Federal, State, or local government as a defendant;
    - iii. Seeks judicial review of an action by LSC or such government agency that affects the grantee's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether LSC or agency acted outside of its statutory authority or violated the grantee's constitutional rights; and
    - iv. Was initiated after December 23, 1998.

45 C.F.R. § 1606.4(b).

## LSC PROGRAM LETTER 15-3—ENFORCEMENT MECHANISMS

### *B. Debarment procedures*

1. The debarment procedures are the same as the termination procedures in 45 C.F.R. Part 1606 and described in section VI, above.
2. The *final debarment decision* will state the effective date of the debarment and the period of debarment, which will be commensurate with the seriousness of the cause for debarment. 45 C.F.R. § 1606.11(d).
3. The debarment will *be for no more than 6 years*. 45 C.F.R. § 1606.11(d).



LSC PROGRAM LETTER 15-3—ENFORCEMENT MECHANISMS

ATTACHMENT A

Enforcement Mechanisms Comparison Table from 78 Fed. Reg. 10087 (Feb. 13, 2013)

<u>Limited Reductions</u>	<u>Termination</u>	<u>Debarment</u>	<u>Suspension</u>
§ 1606.2	§ 1606.2	§ 1606.2	§ 1623.2
Less than 5 Percent	5 percent or more		
<b>Type of Violation</b>			
Substantial violation § 1606.2	Substantial violation § 1606.2		Substantial violation § 1623.3(a) § 1606.2
	Substantial failure § 1606.3(a)(2)		
		Good cause § 1606.4(b)	
			Prompt action is necessary § 1623.3(a)
			Failure of an audit § 1623.3(b)
<b>Procedure</b>			
Preliminary Determination § 1606.6(a)	Preliminary Determination § 1606.6(a)	Preliminary Determination § 1606.6(a)	Proposed Determination § 1623.4(b)
Compliance Agreement (if available and agreed to) § 1606.7(a)	Compliance Agreement (if available and agreed to) § 1606.7(a)	Compliance Agreement (if available and agreed to) § 1606.7(a)	Prompt Corrective Action § 1623.2
Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement) § 1606.7(b)	Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement) § 1606.7(b)	Submission of Written Materials in Opposition to the Preliminary Determination (if no compliance agreement) § 1606.7(b)	Submission of Written Materials in Opposition to the Proposed Determination § 1623.4(f)
Informal Conference § 1606.7(b)–(e)	Informal Conference § 1606.7(b)–(e)	Informal Conference § 1606.7(b)–(e)	Informal Meeting § 1623.4(b)–(f)
Draft Final Decision § 1606.7(f)	Draft Final Decision § 1606.7(f)	Draft Final Decision § 1606.7(f)	Final determination § 1623.4(f)
	Hearing § 1606.8	Hearing § 1606.8	
	Recommended Decision § 1606.9	Recommended Decision § 1606.9	
Review by the LSC President § 1606.10	Review by the LSC President § 1606.10	Review by the LSC President § 1606.10	Review by the LSC President (for a suspension lasting more than 30 days not based on an audit failure) § 1623.4(h)
Final Decision § 1606.10(e)	Final Decision § 1606.10(e)	Final Decision § 1606.10(e)	Suspension Appeal Decision § 1623.4(h)(3)

LSC PROGRAM LETTER 15-3—ENFORCEMENT MECHANISMS

ATTACHMENT B

45 C.F.R. § 1610.2 Restrictions

45 C.F.R. § 1610.2 Restrictions Referred to in Section VII.A.2.c—Debarments

(a) Activities prohibited by the following sections of the LSC Act and regulations:

- (1) *Political activities*—Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) and 45 C.F.R. Part 1608;
- (2) *Activities inconsistent with professional responsibilities*—Section 1007(a)(10);
- (3) *Fee-generating cases*—Section 1007(b)(1) and 45 C.F.R. Part 1609;
- (4) *Criminal proceedings*—Section 1007(b)(2) and 45 C.F.R. Part 1613;
- (5) *Actions collaterally challenging criminal convictions*—Section 1007(b)(3) and 45 C.F.R. Part 1615;
- (6) *Organizing activities*—Section 1007(b)(7) and 45 C.F.R. Part 1612;
- (7) *Abortion proceedings*—Section 1007(b)(8);
- (8) *School desegregation proceedings*—Section 1007(b)(9); and
- (9) *Proceedings involving violations of Military Selective Service Act or military desertion*—Section 1007(b)(10).

(b) Activities prohibited by or inconsistent with the following sections of Public Law 104-134, 110 Stat. 1321 (1996) and LSC regulations:

- (1) *Redistricting*—Section 504(a)(1) and 45 C.F.R. Part 1632;
- (2) *Legislative and administrative advocacy*—Sections 504(a)( 2) through (6), as modified by Sections 504(b) and (e), and 45 C.F.R. Part 1612;
- (3) *Class actions*—Section 504(a)(7) and 45 C.F.R. Part 1617;
- (4) *Client identification and statement of facts*—Section 504(a)(8) and 45 C.F.R. Part 1636;
- (5) *Priorities*—Section 504(a)(9) and 45 C.F.R. Part 1620;
- (6) *Timekeeping*—Section 504(a)(10) and 45 C.F.R. Part 1635;
- (7) *Aliens*—Section 504(a)(11) and 45 C.F.R. Part 1626;
- (8) *Public policy training*—Section 504(a)(12) and 45 C.F.R. Part 1612;
- (9) *Abortion litigation*—Section 504(a)(14);
- (10) *Prisoner litigation*—Section 504(a)(15) and 45 C.F.R. Part 1637;
- (11) *Welfare reform*—Section 504(a)(16), as modified by Section 504(e), and 45 C.F.R. Part 1639;
- (12) *Drug-related evictions*—Section 504(a)(17) and 45 C.F.R. Part 1633; and
- (13) *In-person solicitation*—Section 504(a)(18) and 45 C.F.R. Part 1638.