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LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1614, 1618, and 1623

Limited Reductions of Funding, Termination, and Debarment Procedures; Recompensation; Enforcement; Suspension Procedures; Private Attorney Involvement.

AGENCY: Legal Services Corporation

ACTION: Final Rule

Summary:

This Final Rule amends the Legal Services Corporation's regulations on enforcement procedures through the addition of options for limited reductions of funding, expansion of non-audit based suspensions for up to ninety days, and immediate special grant conditions for compliance issues. The Final Rule provides updates and enhancements to the rules regarding enforcement generally, terminations, debarments, and suspensions. It also provides a technical conforming update to a cross-reference in the private attorney involvement regulation.

Dates:

This rule is effective as of [insert date of publication].

For Further Information Contact:

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Supplementary Information:

I) Procedural Background

On January 31, 2012, the Legal Services Corporation (LSC) published in the Federal Register at 77 FR 4749 a Notice of Proposed Rulemaking (NPRM) proposing changes to LSC's enforcement mechanisms. On August 7, 2012, LSC published in the Federal Register at 77 FR 46995 a Further Notice of Proposed Rulemaking (FNPRM) expanding on the NPRM. LSC is now publishing final rules to conclude this rulemaking.

LSC undertook this rulemaking to add three new enforcement options to the LSC regulations regarding grants for the provision of legal assistance:

- 1) a new "limited reduction of funding" that enables LSC to respond quickly to instances of substantial violation of LSC requirements through funding reductions of less than five percent using more simple procedures than for terminations of five percent or greater;

- 2) suspensions for non-audit based compliance issues that could last for up to ninety days, an increase from thirty days in the previous rule; and
- 3) special grant conditions regarding compliance issues that LSC could add immediately to a current grant.

In the course of the rulemaking, LSC developed new administrative procedures to enhance the opportunities for informal resolution when LSC proposes to undertake a limited reduction of funding, a termination in whole or in part, or a debarment. The rule already provided for informal resolution through an informal conference with opportunities for settlement or compromise. The rule has enhanced the informal conference and added procedures to provide for resolution of the matter through prompt corrective action agreements, when appropriate.

This rulemaking also clarifies existing regulations and makes conforming changes to the rules in order to accommodate the new process and procedures indicated. All of the comments and related memos submitted to the LSC Board regarding this rulemaking are available in the open rulemaking section of LSC's website at www.lsc.gov.

<http://www.lsc.gov/about/regulations-rules/open-rulemaking>

After the effective date of the rule, those materials will appear in the closed rulemaking section.

<http://www.lsc.gov/about/regulations-rules/closed-rulemaking>

II) General Authorities, Impetus for Rulemaking, and Existing Regulatory Compliance Mechanisms

The LSC Act provides general authority to the Corporation "to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act]." 42 U.S.C. 2996e(b)(1)(A). LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant award period or at grant renewal. Several enforcement tools involving suspending or reducing funding to a recipient to address significant non-compliance are provided in LSC-adopted regulations. LSC has adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. LSC has also adopted suspension procedures (45 CFR part 1623) and disallowed-cost procedures (45 CFR part 1630). Lastly, part 1606 provides authority for LSC to debar recipients from eligibility to receive future grants.

LSC amended the part 1606 termination procedures in 1998 and created a separate provision for reductions of funding of less than five percent, which are not

considered terminations and not subject to the full set of procedures that apply to terminations. The 1998 amendments to the rule required, however, that to reduce funding to a recipient by less than five percent, LSC would have to establish additional procedures by rulemaking. 45 CFR 1606.2(d)(2)(v). LSC commenced this rulemaking to establish those procedures.

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 and situations in which LSC has felt the need for the kind of enforcement tools covered by this rulemaking.

This rulemaking also addresses a problem in the previous rules regarding LSC's ability to take timely actions. LSC can impose suspensions after as little as eleven days of process, but the previous rule limited suspensions to thirty days (other than audit-based suspensions). The next enforcement option available to LSC was terminations, which require five months or more of procedures if the recipient uses all available levels of review. Similarly, disallowed costs may be available to recover improperly spent funds, although that process is designed for recovery rather than enforcement and sanction. Also, disallowed costs can take over five months to complete (except for disallowed costs of less than \$2,500). This rulemaking provides for suspensions of funding for up to ninety days, for limited reductions of funding that can be implemented in approximately eighty days, and for special grant conditions that can be added immediately to an existing grant.

This rulemaking also addresses concerns expressed by the Government Accountability Office (GAO) in its report, *Legal Services Corporation: Improved internal controls needed in grants management and oversight*, GAO-08-37 (December 2007). In that report, the GAO opined that LSC has "limited options for sanctioning or replacing poor-performing recipients." GAO-08-37 at 17. The existing enforcement mechanisms available to LSC are best suited to situations involving numerous and/or very significant violations that merit severe actions such as terminations, or to situations in which compliance issues are technical or minor and can be resolved through corrective actions, grant conditions, and similar actions. LSC has not had enforcement mechanisms well suited to violations or compliance issues in an intermediate range (e.g., material but not extreme, or multiple but not profuse) in situations where a recipient does not voluntarily take corrective action in a timely manner. Furthermore, disallowed costs are not a good substitute for an intermediate range enforcement mechanism. The amount of funds in question is not necessarily proportional to the severity of the violation. Minor violations could have large associated costs while major violations could have relatively small associated costs.

LSC significantly revised LSC's enforcement rules in 1998 in response to Congressional changes to the governing law. Prior to 1996, section 1011 of the LSC Act provided minimum process requirements for suspensions over thirty days, terminations, and denials of refunding that included hearing rights and review by independent hearing examiners. 42 U.S.C. 2996j. LSC implemented these statutory

requirements in 1976 and 1978 through the original enforcement regulations: part 1618 (General enforcement thresholds), part 1606 (Terminations and denials of refunding), and part 1623 (Suspensions). In 1996, Congress suspended section 1011 via riders to the annual LSC appropriation, which have been reincorporated every year thereafter, including some modifications in 1998.

For the purposes of the funding provided in this [FY 1996 Appropriations] Act, rights under sections 1007(a)(9) [interim funding for refunding applicants] and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall not apply.

Pub. L. 104-134, § 503(f), 110 Stat. 1321 (1996) (FY 1996); Pub. L. 104-208, § 501(b), 110 Stat. 3009 (1996) (FY 1997) (reiterating the FY 1996 language). For FY 1998, Congress reiterated the FY 1996 language and further elaborated that LSC “may terminate” a grant or contract if LSC finds “that the recipient has failed to comply with any requirement of the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), this [appropriations] Act, or any other applicable law relating to funding for the Corporation” Pub. L. 105-119, §§ 501(b) and (c), 111 Stat. 2440 (1997) (FY 1998). Congress has incorporated that language by reference in every annual LSC appropriation since 1998. Congress also mandated in 1996 and thereafter that LSC have the option to suspend funding to a recipient, in full or in part, if the recipient fails to have an acceptable audit. Audit-based suspensions last until completion of an acceptable audit. Pub. L. 104-134, § 509(c), 110 Stat. 1321 (1996) (FY 1996) (incorporated by reference thereafter).

LSC implemented these statutory changes by revising 45 CFR parts 1606 and 1623. 63 FR 64636 (1998) (parts 1606 and 1625), 63 FR 64646 (1998) (part 1623). LSC explained that:

the new law in the appropriations act emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations and other applicable law. See H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures in part 1606 have been streamlined. The changes are intended to emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance. At the same time, the Corporation intends that recipients be provided notice and a fair opportunity to be heard before any termination or debarment action is taken.

63 FR at 64637 (preamble to revised parts 1606 and 1625). LSC further elaborated in the preamble to the rulemaking that:

[t]he legislative intent underlying Sections 501(b) and (c) of the Corporation’s FY 1998 appropriations act was to enable the Corporation to

streamline its due process procedures in order to ensure that recipients are in full compliance with LSC grant requirements and restrictions.

Id. at 64640. LSC carefully balanced the concerns for ongoing client services and recipient rights with the clear direction from Congress to enhance accountability and oversight of recipients' use of LSC funds. The current rulemaking is designed to build upon, but not fundamentally alter, the rationale for the 1998 rulemaking.

The changes in this final rule reflect LSC's obligation to safeguard public funds appropriated by Congress for civil legal aid by ensuring compliance with LSC rules, restrictions, and requirements. These additions to the enforcement mechanisms are consistent with LSC's understanding of Congress's intent to strengthen LSC's enforcement mechanisms, while carefully accounting for the importance of continued delivery of legal services and the rights of LSC recipients.

III) Summary of Existing Compliance Tools Not Covered by the Regulations

LSC uses a variety of non-regulation based tools to track and ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning of a grant year.

LSC relies primarily on RCAs to remedy compliance problems. The LSC Office of Compliance and Enforcement (OCE) estimates that in approximately 90 percent of cases in which RCAs are imposed, recipients implement the RCAs on a timely and satisfactory basis. In approximately ten percent of the cases, however, a recipient fails to implement the required corrective actions in a timely or satisfactory manner. In some instances in which recipients have failed to implement RCAs in a timely or satisfactory manner, LSC has imposed SGCs. Although SGCs may be substantively identical to the measures contained in RCAs, SGCs elevate the matter by formally incorporating the conditions into the recipient's grant documents and ensuring that the recipient's Board Chair, who has to sign the SGCs, is aware of an ongoing problem. In recent years, LSC has also used short-term funding to encourage compliance by providing a grant or successive grants for less than a year (*e.g.*, month-to-month).

IV) Summary of Procedures for Compliance Tools

Members of the LSC Board raised concerns that the parallel and interrelated procedures for different enforcement mechanisms could be confusing. For clarification, the table below summarizes the enforcement actions provided for in the rules and the respective procedures for each. This table uses the revised nomenclature provided in the final rule. The prior suspension and termination rules contained inconsistencies in the terms used for each stage of the process; those terms have been standardized in the final rule.

Enforcement Mechanisms Final Rule
January 8, 2013, Draft

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

V) Commentary on Rulemaking Process and Comments Received

LSC received nineteen comments on the NPRM and eight comments on the FNPRM. All of the comments and LSC's analysis of them are posted on the rulemaking page of www.lsc.gov.

<http://www.lsc.gov/about/regulations-rules>

The most extensive comments on both proposals were submitted by the LSC Office of Inspector General (OIG), the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID), and the National Legal Aid and Defender Association (NLADA). Colorado Legal Services and the Northwest Justice Project (NJP) also submitted detailed comments. The other comments generally endorsed the NLADA comments. Only the OIG fully supported the rulemaking, although the OIG recommended removing any time limit on suspensions and expressed concerns that the requirements for the new special grant conditions were too restrictive. SCLAID supported the rulemaking, but strongly recommended significant enhancements to standards and procedures similar to those recommended by NLADA. NLADA, and most of the other comments, opposed the rulemaking and recommended significant enhancements to standards and procedures if it proceeded.

a. New Compliance Tools

The NPRM proposed a new set of procedures for limited reductions of funding based on the existing procedures for suspensions, which provide for one level of review through an informal meeting. In response to comments that this did not provide sufficient process, LSC revised the proposal in the FNPRM in two ways. First, the same process is used at the initial stage for terminations and for limited reductions. Thereafter, limited reductions may be appealed to the LSC President using procedures based on the disallowed cost appeal procedures in 45 CFR part 1630. Some comments also raised similar concerns for suspensions, especially if they could last for up to ninety days. In response, the final rule also adds the same appeal process for suspensions once they extend beyond thirty days (thirty-day suspensions have always been permitted without further appeal). The NPRM proposed allowing LSC to impose SGCs immediately during a grant term rather than waiting for a new grant award or renewal. The OIG's comment expressed concern that the SGC language might appear to constrain some of LSC's authority, and other comments indicated concerns that the SGC language was too vague. In the FNPRM, LSC revised the language to clarify that it applies to the kinds of situations in which LSC has investigated a matter and developed RCAs. LSC may immediately impose SGCs that incorporate those RCAs into the grant documents.

b. Standards and Procedures

The comments that recommended enhancements in the standards and procedures were not limited to the enforcement actions in the proposed rulemaking. Rather, they recommended revisions that would significantly change the rules as they have existed since 1998. In many cases, they would return to the pre-1998 standards,

such as requiring non-LSC, independent hearing examiners, or exceed those standards, such as an increased intent requirement and a safe harbor for reliance on reasonable alternate interpretations of the LSC rules. LSC commenced this rulemaking to enhance enforcement options within the standards and procedures adopted in the 1998 rulemaking to respond to Congress's changes in the enforcement requirements of the LSC Act. The final rule does not adopt the many suggestions in the comments to change that carefully constructed enforcement framework. The OIG also suggested adding a requirement for publication of all final decisions to address due process concerns in the comments through transparency for those final actions. Rather than incorporating that suggestion as a regulatory requirement, LSC will address it in the policies and procedures for enforcement actions.

c. Informal Conference and Prompt Corrective Actions

The final rule makes a number of revisions to increase the focus on attempts to resolve the violation at or before the informal conference. The final rule adds to the notice of the preliminary determination a requirement for summarizing prior attempts at resolution. The previous rule required that the same LSC employee who issued the notice would hold the informal conference. The final rule permits LSC to designate any senior employee to hold the informal conference, which provides LSC with more flexibility to set a dispute resolution tone. The final rule also adds "implementation of corrective actions" as an example of the types of settlement or compromise envisioned for the informal conference.

The final rule includes a new alternative strategy for informal resolution prior to the implementation of an enforcement action. LSC has the option of notifying the recipient that it can avoid the enforcement action through corrective action, if appropriate. The recipient may elect to accept that corrective action through timelines and implementation plans acceptable to LSC and documented in a compliance agreement; LSC could hold the enforcement action in abeyance so long as the recipient honors the agreement. If the recipient completes the corrective actions to LSC's satisfaction (in both substance and timeliness), then LSC would withdraw the preliminary determination without implementing the enforcement action. If LSC at any time decides that the recipient has failed to adhere to the agreed-upon corrective action plan, including failing to act in accordance with the established timeline, then LSC could continue with the enforcement process.

d. Suspension Appeals

In response to the comments received, LSC has included in the final rule an appeals process for suspensions that last over thirty days. The appeals process is based on the appeals process for limited reductions of funding. As with suspension decisions, the timeframe is short to enable LSC to resolve the appeal quickly. Unlike other enforcement actions, suspensions are enforced during the appeal period.

e. Scope of Enforcement Action

The final rule discusses the scope of partial terminations and limited reductions

of funding by using the language of the previous rule regarding the level of financial assistance provided by the Corporation to a recipient pursuant to a grant or contract. 45 CFR 1600.1 defines “financial assistance” as the “annualized funding from the Corporation granted under section 1006(a)(1)(A) for the direct delivery of legal assistance to eligible clients.” These grants are for the provision of general-purpose legal assistance in a geographic area or to a specific population. Currently, LSC provides these grants for three types of service areas: basic field, Native American, and migrant. When LSC awards multiple service areas to a recipient (*e.g.*, both a basic field service area and migrant service area), it typically does so through a single grant or contract. Part 1606 enforcement actions affect the level of financial assistance, which will include all of the 1006(a)(1)(A) service areas.

Other LSC grants, under sections 1006(a)(1)(B) or (a)(3) of the LSC Act, are not subject to these procedures. Rather, LSC may provide for terminations or other enforcement actions for those grants pursuant to policies and procedures specific to those grant programs. For example, funding for Technology Initiative Grants is project-based and specifically tied to acquisitions, tasks, and timelines.

The final rule implements the NPRM provision that limited reductions apply only to one grant year. The final rule continues the provisions of the previous rule that a partial termination presumptively applies to only one grant year, but that LSC can specify a longer period up to the entire funding term.

VI) Section-by-Section Analysis

Part 1606—Termination, Limited Reduction of Funding, and Debarment Procedures; Recompensation

§ 1606.1 Purpose

Section 1601.1(b) contains two additions. First, the phrase “proportional to the proposed action” is added to modify “timely and fair due process procedures.” This addition corresponds to the addition of procedures for limited reductions of funding of less than five percent, which do not include a hearing before a hearing officer. The rule provides two sets of overlapping procedures, one for debarments and terminations of funding (five percent and greater) and the other for limited reductions of funding (less than five percent). Second, the phrase “or to impose a limited reduction of funding” is added to the list of remedies available under the rule.

A new section 1601.1(d) reflects a reorganization of the rule in the interest of clarity. It relocates the previous section 1606.2(c), without change, which described provisions of other LSC regulations that involve funding changes but are not subject to the termination procedures. This relocation emphasizes and clarifies that the indicated situations are not subject to the actions under part 1606. A corresponding change to matching language in 45 CFR part 1614 is included in this final rule.

§ 1606.2 Definitions

This section has substantive and structural changes. All of the definitions now appear alphabetically.

The term “Corporation” is defined in 45 CFR 1600.1 to mean the Legal Services Corporation. The definition has been expanded here to provide that decisions of the Corporation, such as initiating a part 1606 proceeding, must be made by an individual acting at the level of, or senior to, an LSC office director. A deputy director could make these decisions if he or she is acting with the authority of the director, such as when the director’s position is vacant, or the director is unavailable due to an illness and the deputy director has taken over the relevant responsibilities. The FNPRM had proposed that decisions could be made by deputy directors. The final rule narrows the circumstances in which deputy directors can act, in part responding to concerns raised by a commenter.

“Days” is added as a defined term to mean calendar days as computed under the Federal Rules of Civil Procedure, unless business days are specified, in which case Saturdays, Sundays, and legal holidays recognized under those rules are excluded. The rule had not previously defined days, which could have caused confusion regarding deadlines. In particular, some deadlines were five days, which in some cases could be as little as two business days. All time periods below fifteen days are changed in the rule to business days.

“Funding term” is added as a defined term to mean the time period for an award of financial assistance for a service area as that term is used in grant-making. The funding term is the longest period between competitions for a service area. Under 45 CFR part 1634, LSC can award a section 1006(a)(1)(A) grant or contract for up to five years, which is the funding term. LSC provides section 1006(a)(1)(A) awards for a maximum funding term, which is normally no greater than three years. Within the funding term, LSC provides funding for grant award periods of no more than one year, which can be renewed for additional grant award periods.

“Limited reduction of funding” is added as a defined term for reductions of funding of less than five percent, which the previous rule excluded from the definition of terminations. Unlike partial terminations, limited reductions apply only to the current grant year.

“LSC requirements” is added as a defined term in 45 CFR part 1618 to capture the full list of statutory, regulatory, and other requirements that apply to LSC grants or contracts for financial assistance under the LSC Act. Parts 1606 and 1623 of the previous rules repeatedly referenced the list of sources specified in this definition. For both clarity and consistency, the term is now defined using the language appearing in the previous rules and is cross-referenced in both parts 1606 and 1623.

“Receipt” of materials is added as a defined term to provide clarity in calculating deadlines under the rule. Formal service of process is not required. Service must be

sufficient to ensure that both LSC and the recipient are fully aware of the proceedings and the actions taken by both entities at each stage.

The definition of “recipient” is functionally unchanged from the previously published version of this rule, which reiterated the definition at 45 CFR 1600.1. The final rule replaces that reiteration with a simple cross-reference.

The term “substantial noncompliance” is clarified in this rule. The term is defined to mean either a substantial violation of the LSC requirements or a substantial failure to provide high quality, economical, and effective legal assistance.

A definition of “substantial violation” has been added using the functional definition from section 1606.3(a) without any material modifications that would change its meaning or application from the previous rule.

The definition of “termination” has been updated to reflect new definitions in the rule and relocation of the cross-references to other regulations; no material modifications that would change its meaning or application from the previous rule have been made.

A definition of “violation” has been added to make clear that the scope of violations at issue under this rule is limited to the LSC requirements.

§ 1606.3 Grounds for a termination or a limited reduction of funding.

The title of this section is updated to add limited reductions of funding.

Section 1606.3(a) has minor nomenclature changes to conform to the new definitions and terms, including the new definition of “substantial violation,” but without any material modifications that would change its meaning or application from the previous rule. The definition of a “substantial failure” remains in section 1606.3(a)(2) with two adjustments: 1) the LSC appropriations have been added as a measure of performance, and 2) the term “guidance” is changed to “guidelines or instructions” consistent with the use of those terms in lieu of “guidance” throughout the previous and revised rules.

Section 1606.3(b) is added to specify that LSC may impose a limited reduction of funding for substantial violations, but not substantial failures, when LSC determines that a termination, in whole or in part, is not warranted. As with terminations, LSC can base a limited reduction of funding only on substantial violations occurring within the past five years.

Section 1606.3(c), the former subsection (b), is changed to add limited reductions of funding. The requirements for a “substantial violation” are moved, without material modifications that would change their meaning or application from the previous rule, to the new definition of “substantial violation.” As proposed in the NPRM those same criteria apply to the determination of the magnitude of a proposed termination or limited reduction of funding. LSC stated in the NPRM that consideration of these factors was already implicit in considerations of how much funding should be affected by a proposed enforcement mechanism. SCLAID’s comments recommended that LSC add an entire

new section and criteria for determinations of magnitude, including the impact on client services and other funding for the recipient. The final rule does not do so because the magnitude of an enforcement action should relate directly to the magnitude of the violation and deterrence of future violations. LSC has general discretion to consider the totality of the situation when deciding how to proceed with an enforcement action to foster ongoing compliance while minimizing disruption of client services.

§ 1606.4 Grounds for debarment.

This section does not include any material modifications that would change its meaning or application from the previous rule. All changes are technical adjustments.

The language of section 1606.4(b)(4) is modified to clarify that it applies to any arrangements that are covered by debarments, not only subgrants or subcontracts, and that reference to a debarred “IPA,” which is undefined in the previous rule, means any debarred independent public accountant or other auditor.

Last, the reference to the “effective date of this rule” in section 1606.4(b)(5) is changed to December 23, 1998, the effective date of the previous rule.

§ 1606.5 Procedures.

The heading and section 1606.5(a) are updated to remove the limited reference to terminations and debarments in order to include limited reductions of funding. These procedures are available for, and apply to, all part 1606 enforcement mechanisms.

A new section 1606.5(b) is added to correspond to the new level of review in section 1606.10 for limited reductions of funding. The LSC President, or another senior LSC employee, will hear any final appeal of a limited reduction draft final decision. Those procedures are modeled on the 45 CFR part 1630 final appeal procedures for disallowed costs. The person hearing the appeal must have not been involved in the prior proceedings. The final rule requires that LSC designate the person to hear the final appeal before LSC considers whether or not to proceed with a preliminary determination for a limited reduction of funding.

§ 1606.6 Preliminary determination and final decision.

The title of this section is updated to include reference to a final decision, which may be issued under this section if the recipient does not request any review of the preliminary determination. The language of this section is updated for clarity and to include limited reductions of funding, without material modifications that would change its meaning or application from the previous rule.

Section 1606.6(a)(6) is added to explicitly provide an option for LSC to specify corrective action that could resolve the situation without a termination or limited reduction of funding. This language is based on the previous suspension rule at 45 CFR part 1623; it does not appear in the previous part 1606 rule. LSC is not required to provide the recipient with a corrective action option, and the recipient does not have a

right to avoid a termination or limited reduction of funding through corrective actions unless explicitly authorized by LSC. This language links to the new section 1606.7(a) to provide a clear option for resolving these situations through corrective action if LSC determines that doing so would be sufficient.

Section 1606.5(a)(7) is added to require that the preliminary determination summarize any prior attempts at resolution of the situation. The addition of this subsection does not require LSC to seek resolution prior to initiating a part 1606 action. Rather, when LSC and the recipient have attempted to resolve the situation, the rule will now require that LSC summarize those attempts and make them part of the administrative record.

References to a "designated employee" in this section are replaced with references to the Corporation as the actor, consistent with the definition of Corporation.

Section 1606.7 Corrective action, informal conference, review of written materials in opposition to the preliminary determination, and final decision.

The title and content of this section have been updated to expand and clarify the options available after a recipient receives a preliminary determination. As stated in the previous rule, the informal conference is designed to create the opportunity for narrowing the issues and exploring the possibility of settlement or compromise. The informal conference is retained without material modifications that would change its meaning or application from the previous rule. The rule is changed to permit any senior LSC employee to hold the informal conference rather than the previous requirement that it be held by the same employee who issued the preliminary determination. In some cases, the same employee should handle both matters to bring consistent perspective and experience to the matter. In other situations, it may foster an atmosphere of settlement or compromise to have different LSC employees handle each stage of the process.

This section now explicitly provides an option for the recipient to submit written materials in opposition to the preliminary determination without a request for an informal conference. This option to present arguments in writing only is based on the similar option in the suspension rule at 45 CFR part 1623; a conference is not required if the recipient requests only a paper review.

§ 1606.7(a) Corrective Action.

Subsection (a) provides a new option for resolving a preliminary determination through adoption of any corrective action proposed by LSC, in its sole discretion, as a clear path to settlement of the issues. A corrective action proposed by the recipient that significantly differs from the LSC proposal may be considered at an informal conference but not as part of the section 1606.7(a) procedures. The recipient must agree to the terms and timing of implementation of the corrective actions to the satisfaction of LSC, as memorialized in a written compliance agreement. If, at any time, LSC determines that the recipient is not sufficiently implementing the corrective action, LSC can proceed to issue a draft final decision, subject to the further rights of review under later sections of this part. If a recipient chooses this new process, then the recipient cannot later

request an informal conference under this section. This option responds to a comment that the proposed rule did not clearly address what would happen if the recipient adopted the suggested corrective action. It also implements suggestions from the LSC Board that the rule should provide better means of alternative resolution when appropriate.

§ 1606.8 Hearing for a termination or debarment.

The title of this section is updated to specify that hearings are available only for terminations and debarments, but not for limited reductions of funding. There are no material modifications that would change the meaning or application of this section from the previous rule. The deadlines have been designated as business or calendar days consistent with the new definition of days.

§ 1606.9 Recommended decision for termination or debarment.

The title and language of this section are updated to specify that the recommended decision is applicable only to hearings for terminations or debarments. The only substantive change is a new section 1606.9(a)(2) that permits the hearing officer to recommend reducing a termination to below five percent, and thus convert a termination into a limited reduction of funding. The previous rule permitted the hearing officer to recommend terminations only, which would exclude the option of funding reductions of below five percent. Reference to limited reductions of funding is added to section 1606.9(a)(3) for consistency without any material modifications that would change its meaning or application from the previous rule referencing terminations or debarments.

§ 1606.10 Final decision for a termination, debarment, or limited reduction of funding.

This section is updated to add direct appeals to the LSC President, or designee, of draft final decisions for limited reductions of funding. This type of appeal is similar to the final appeal of a disallowed cost decision in 45 CFR part 1630. The final review is identical as that provided for in other part 1606 actions, with one exception. For limited reduction of funding appeals to the President, in which there is no right to review by a hearing officer, new subsection (d) provides that the President must not have had prior involvement with the limited reduction of funding proceedings under this part. That provision is also based on the part 1630 process, which requires that the President not review actions in which he or she had prior involvement. As discussed in the FNPRM, the President is not disqualified merely because he or she is briefed about the situation, contacted by the recipient or other parties, or otherwise is aware but not actively involved in the part 1606 proceedings.

A number of comments recommended that the hearing officers or the final decision maker for appeals be non-LSC employees. As discussed earlier, in 1996 Congress lifted the LSC Act requirement for enforcement actions to be reviewed by an independent hearing examiner. The final rule does not change the impartiality requirement for hearing officers for terminations and debarment that they have not had prior involvement in the part 1606 enforcement action being reviewed. It also does not

change the ability of LSC to suspend funding for up to thirty days without impartial review. For the new limited reductions of funding and suspensions of over thirty days, the final rule provides the same requirement of impartiality for the LSC President or other senior LSC employee providing final review of the matter. These impartiality requirements are sufficient for the process rights of recipients within the statutory framework and LSC's understanding of Congress's expectations for LSC's enforcement procedures.

Other changes to this section clarify the process and deadlines without substantive changes. The FNPRM suggested adding the section 1606.6(a) preliminary determination requirements to any final decision modifying or extending the draft final decision. That suggestion is not retained in this final rule because it became apparent during the comment period that those requirements are tailored to the preliminary determination, *e.g.*, including the notice of rights to appeal and continued funding, and are not appropriate for final decisions.

§ 1606.11 Qualifications on hearing procedures.

This section is updated for clarity without material modifications that would change its meaning or application from the previous rule. Section 1606.11(c)(3) is updated to require that LSC provide the final decision to the recipient within five days of the expiration of the appeal period. The previous rule stated that the recommended decision would become final if not appealed, but did not state when it must be provided as a final decision.

§ 1606.12 Time and waiver.

This section is updated for clarity without material modifications that would change its meaning or application from the previous rule

§ 1606.13 Interim and termination funding; reprogramming.

This section is updated to include reference to limited reductions of funding. A new section 1606.13(d) is added to state explicitly that the manner of implementation is at the sole discretion of LSC. For example, depending on the situation, including the timing of the action in the grant year and funding term, LSC may choose to pro-rate a partial termination or limited reduction through the remaining grant payments or to withhold the reduced funds in one lump sum. The previous rule did not address that issue and this new section is consistent with the options available to LSC within its discretion under that rule.

Section 1606.13(e), the former subsection (d), is modified to remove the reference to using the terminated or reduced funds for the same service area, as proposed in the NPRM. The previous rule provided that LSC may keep the funds in the same service area or otherwise reallocate them for any basic field purposes. Some of the comments recommended keeping the existing rule. As discussed in the NPRM, this language is eliminated because it could lead to an erroneous expectation that LSC would give preference to keeping the funds from a termination in part or from a limited reduction of funding in the same service area in which the same recipient continued to provide

services through the end of the funding term. LSC had the authority under the previous rule and has the authority under this final rule to exercise its discretion to determine the best use of these funds in light of considerations such as the needs of the service area, the behavior of the recipient, and other uses of recovered funds for emergencies or special grants in other service areas. The change in language does not change the substance of the rule.

Part 1614—Private Attorney Involvement

§ 1614.7(b) Failure to comply.

One technical update to 45 CFR part 1614 relates to this rulemaking. Although not included in the NPRM or FNPRM, this update includes no material modifications that would change the meaning or application of this section from the previous rule and is necessary to harmonize that rule with this rulemaking and other prior changes to the LSC regulations. Part 1614 requires that an LSC recipient expend an amount equivalent to at least 12.5 percent of a basic field award on private attorney involvement (PAI) activities. The failure to do so may result in LSC withholding or recovering some funds from the recipient, depending on the circumstances. Section 1614.7 of the previous rule provided the requirements for those situations and stated that the withholding or recovery of funds for a failure to meet the part 1614 requirements does not constitute either a termination or a denial of refunding. The reference to terminations is changed to a reference to any action under 45 CFR part 1606. The reference to denials of refunding is eliminated, as LSC withdrew the denial of refunding regulation in 1998.

Part 1618—Enforcement Procedures

This final rule incorporates some substantive changes and some extensive structural, but non-substantive, changes to 45 CFR part 1618 as proposed in the FNPRM. The significant substantive change to the rule involves adding the imposition of special grant conditions during a grant year to section 1618.5(c). The final rule also changes references to violations of the LSC Act throughout the rule to violations of the LSC requirements as the term “LSC requirements” is defined for use in part 1606 and 1623. The previous rule defined the “Act” as the LSC Act or the LSC rules and regulations, but did not include other applicable laws, such as the LSC appropriations riders, or LSC guidelines and instructions, which have been included in both parts 1606 and 1623 as they have been updated over the past thirty years. Part 1618 is both outdated and confusing in this regard. The new definition of LSC requirements is based on the language used in parts 1606 and 1623, and this definition applies in all three sections for consistency and clarity.

Some of the comments suggested changing the threshold standard under section 1618.5(b) for proceeding to enforcement actions under parts 1606 and 1623. The rule provides that LSC can proceed to consider enforcement actions:

[w]henever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to

take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful

45 CFR 1618.5(b). Those comments suggested adding a "knowing and willful" standard to this section. The OIG's comment notes that the 1998 rulemaking considered using "intent" as a factor in the standard for terminations and choose instead to use the defined term "knowing and willful." The final rule does not change this language and retains the longstanding "intent" prong of the part 1618 analysis consistent with original structure of the rule under the LSC Act and the 1998 changes to parts 1606 and 1623. "Knowing and willful" was adopted in 1998 as a defined term in those regulations as one of many factors for consideration, while "intentionally violated" was retained in part 1618.

§ 1618.1 Purpose.

The purpose section is updated to incorporate the broader scope of the LSC requirements.

§ 1618.2 Definitions.

The definitions section is updated to incorporate the broader scope of the LSC requirements. A definition of "violation" has been added to make clear that the scope of violations at issue under this rule is limited to the LSC requirements.

§ 1618.3 Complaints.

The language of this section is updated for clarity and to reference the new definitions.

§ 1618.4 Duties of recipients.

The language of this section is updated for clarity and to reference the new definitions. A new section 1618.4(c) is added to emphasize that this section does not create rights for recipient employees. Rather, this section is designed to ensure that recipients adopt and follow procedures designed to ensure that employees implement and follow the LSC requirements, and that the recipient applies those requirements consistent with LSC's interpretation of them.

§ 1618.5 Duties of the Corporation.

The language of this section is updated for clarity and to reference the new definitions and include reference to limited reductions of funding. Section 1618.5(a) has a new final sentence clarifying that LSC's investigation of a possible violation may be limited to determining if the recipient is taking sufficient actions.

The existing language in section 1618.5(b) requires "attempts at informal resolution" prior to proceeding to consider enforcement actions under some circumstances. There are no changes to this language, but LSC notes that the information resolution referenced here includes consideration of remedial actions, preventative actions, and sanctions, as discussed in the FNPRM.

A new section 1618.5(c) is added regarding immediate special grant conditions. Under previous LSC practice, special grant conditions were imposed only when a new grant was awarded or an existing grant was renewed. Under that practice, a recipient had an opportunity to consider the special grant conditions prior to agreeing to them. The NPRM proposed language to permit LSC to impose immediate grant conditions any time that the section 1618.5(b) thresholds are met. The FNPRM revised that language to permit immediate special grant conditions only after LSC determines that three factors are met: 1) a violation has occurred, 2) corrective actions are required, and 3) special grant conditions are needed prior to the next renewal or competition. The immediate special grant conditions enable LSC to convert required corrective actions contained in reports, such as OCE reports, into specific grant requirements.

Part 1623—Suspension Procedures

The NPRM proposed to change only the language regarding the thirty-day limit on non-audit based suspensions to increase it to a ninety-day limit. The FNPRM, and this final rule, make a number of non-substantive, technical changes to harmonize the suspension rule with 45 CFR part 1606. In the previous rule, some, but not all, of the relevant definitions are repeated in both rules. The final rule provides a cross reference to the definitions in 45 CFR part 1606 for consistency. An additional change is made in the final rule to permit commencement of other enforcement actions during a suspension. This change is consistent with the overall rulemaking and the revised enforcement mechanisms structure.

Comments on the NPRM and the FNPRM recommended an appeal process for suspensions, especially those that go beyond certain dollar thresholds. The OIG agreed that some appeal might be appropriate, but expressed concern about adopting appeal procedures that are too cumbersome and emphasized that appeals should occur during the pendency of the suspension, which is meant to protect funds from future misuse. The final rule includes an appeal procedure that mirrors the procedure for limited reductions of funding, which is based on the 45 CFR part 1630 disallowed cost appeal procedure.

The OIG also recommended eliminating any time limit for suspensions, and permitting suspensions to continue until compliance, as is the case for audit-based suspensions. In the 1998 rulemaking, LSC decided to retain a thirty-day limit on suspensions because LSC determined that a termination process was more appropriate than a prolonged suspension. 63 FR 64636 at 64638 (1998). In this rulemaking LSC has expanded suspensions to ninety days to make them more effective in short timeframes, but LSC continues to believe that terminations or reductions of funding with their corresponding procedures are more appropriate for intractable concerns that cannot be resolved within a limited suspension period.

§ 1623.2 Definitions.

The definitions of "knowing and willful" and "recipient" are deleted and replaced with a cross-reference to the definitions in 45 CFR part 1606, which include both of those terms. The definitions are identical in the previous rules and this change makes no

substantive change to either. The use of the same definitions for other terms in both rules provides consistency throughout the regulations, e.g., "LSC requirements" and "substantial violation."

§ 1623.3 Grounds for suspension.

The previous rule provided a definition of "substantial violation" identical to the use of that term in 45 CFR part 1606. The term is deleted in favor of the new cross-reference to definitions in part 1606. There are no substantive changes to the definition.

Similarly the term "LSC requirements" replaces the list of LSC requirements that appeared in this rule and in other places in the regulations. It is defined in 45 CFR part 1618 and cross-referenced in 45 CFR part 1606.

§ 1623.4 Suspension procedures.

In response to comments regarding the need for appeals of suspensions, LSC is adding an appeals process for suspensions that last longer than thirty days. The process is specified in sections 1623.4(a) and (h). This addition preserves the previous rule's requirements for commencing suspensions based on notice and an informal meeting and continuing those suspensions for up to thirty days without further appeal. If the suspension lasts longer than thirty days, then the recipient may appeal to the LSC President. The appeal procedures are based on the new part 1606 limited reduction of funding appeal procedures, which are in turn based on the part 1630 disallowed cost appeal procedures. The discussion of those procedures in part 1606 applies equally to this section. Unlike part 1606 actions, the suspension will continue pending the appeal. The final rule requires that LSC issue a suspension decision within fifteen calendar days of receipt of the appeal in order to resolve the appeal promptly.

New sections 1623.4(d) and (e) are copied from the revised informal conference procedures in 45 CFR part 1606. That language emphasizes seeking settlement or compromise and provides that the informal meeting can be conducted by the same employee who issued the proposed determination, or another senior LSC employee.

Section 1623.4(k), regarding audit-based suspensions, is updated to state that the new appeal process does not apply to audit-based suspensions, preserving the previous rule's requirements.

§ 1623.6 Interim Funding.

A technical change is made to section 1623.6(b) to state that suspended funds will be "released" at the end of the suspension period rather than "returned."

VII) Promulgation of Regulations

For the reasons set forth above, and under the authority of 42 U.S.C. 2996g(3), LSC proposes to amend 45 CFR chapter XVI as follows:

List of Subjects in 45 CFR Part 1606

Administrative practice and procedure
Grant programs-law
Legal services

1. Revise 45 CFR part 1606 to read as follows:

Part 1606—TERMINATION, LIMITED REDUCTION OF FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.

- 1606.1 Purpose.
- 1606.2 Definitions.
- 1606.3 Grounds for a termination or limited reduction of funding.
- 1606.4 Grounds for debarment.
- 1606.5 Procedures.
- 1606.6 Preliminary determination and final decision.
- 1606.7 Corrective action, informal conference, review of written materials, and final decision.
- 1606.8 Hearing for a termination or debarment.
- 1606.9 Recommended decision for a termination or debarment.
- 1606.10 Final decision for a termination, debarment, or limited reduction of funding.
- 1606.11 Qualifications on hearing procedures.
- 1606.12 Time and waiver.
- 1606.13 Interim and termination funding; reprogramming, implementation.
- 1606.14 Recompensation.

Authority: 42 U.S.C. 2996e (b)(1) and 2996f(a)(3); Pub. L. 105-119, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104-134, 110 Stat. 1321.

Source: [insert Federal Register citation for date of publication] unless otherwise noted.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision 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 and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a lesser reduction in funding; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

(d) None of the following actions are subject to the procedures or requirements of this part:

- (1) A reduction of funding required by law, including but not limited to a reduction in, or rescission of, the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;
- (2) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;
- (3) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;
- (4) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Corporation*, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual acting with a seniority level at, or equivalent to, the level of an office director or higher.

(b) *Days* shall mean the number of calendar days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of *business days* shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

(c) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to any other means, including a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(d) *Funding term* means the maximum time period for an award or awards of financial assistance under section 1006(a)(1)(A) of the LSC Act provided by the Corporation to a recipient selected pursuant the competition requirements at 45 CFR part 1634. LSC may award grants or contracts for a period of the entire funding term or for shorter periods that may be renewed or extended up to the funding term.

(e) *Knowing and willful* means that the recipient had actual knowledge that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action, as the case may be.

(f) *Limited reduction of funding* means a reduction of funding of less than five percent of a recipient's current level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction of funding will affect only the recipient's current year's funding.

(g) *LSC requirements* means the same as that term is defined in 45 CFR Part 1618.

(h) *Receipt* of materials shall mean that the materials were sent to the normal address for physical mail, e-mail, or fax transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation e-mail or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient or the Corporation is sufficient for the running of applicable time periods. Proof of receipt by the Chair of the governing body is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

(i) *Recipient* means the same as the term is defined in 45 CFR Part 1600.

(j) Substantial noncompliance means either a substantial violation, as defined in this part, or a substantial failure, as indicated at § 1606.3(a) of this part.

(k) Substantial violation means a 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 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.

(l) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part in the amount of five percent or greater prior to the expiration of the funding term of a recipient's current grant or contract. A partial termination will affect only the level of funding for the current grant year, unless the Corporation provides otherwise in the final decision.

(m) *Violation* means a violation by the recipient of the LSC requirements.

§ 1606.3 Grounds for a termination or a limited reduction of funding.

(a) A grant or contract may be terminated in whole or in part when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act or LSC appropriations, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidelines or instructions issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a).

(c) A determination of whether there has been a substantial violation for the purposes of this part, and the magnitude of any termination, in whole or in part, or any lesser reduction in funding, shall be based on consideration of the criteria set forth in the definition of "substantial violation" in this part.

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, "good cause" means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant or contract of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2 (a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) Any agreement or arrangement, including, but not limited to, a subgrant, subcontract, or other similar agreement, with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

- (ii) An agreement for professional services with an independent public accountant or other auditor debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or
- (5) The filing of a lawsuit by a recipient, provided that the lawsuit:
- (i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;
 - (ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;
 - (iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and
 - (iv) Was initiated after December 23, 1998.

§ 1606.5 Procedures.

- (a) Before any final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.
- (b) Prior to a preliminary determination involving a limited reduction of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion set out in § 1606.10(d) of this part.

§ 1606.6 Preliminary determination and final decision.

- (a) When the Corporation has made a preliminary determination of one or more of the following, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body: that a recipient's grant or contract should be terminated, that a limited reduction of funding shall be imposed, or that a recipient should be debarred. The notice shall:
 - (1) State the substantial noncompliance that constitutes the grounds for the proposed action;
 - (2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;
 - (3) Inform the recipient of the proposed amount and proposed effective date for the proposed action;

- (4) Advise the recipient of its procedural rights for review of the proposed action under this part;
- (5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13 of this part;
- (6) Specify what, if any, corrective action the recipient can take to avoid the proposed action; and
- (7) Summarize prior attempts, if any, for resolution of the substantial noncompliance.

(b) If the recipient does not request review, as provided for in this part, before the relevant time limits have expired, then the Corporation may issue a final decision to the recipient. No further appeal or review will be available under this part.

§ 1606.7 Corrective action, informal conference, review of written materials, and final decision .

(a) If the Corporation proposes a corrective action in the preliminary determination pursuant to § 1606.6(a)(6) of this part, then the recipient may accept and implement the corrective action, in lieu of an informal conference or submission of written materials under this section, subject to the following requirements:

- (1) Within 10 business days of receipt of the preliminary determination, the recipient may submit a draft compliance agreement to accept the terms of the proposed corrective action, which must include an implementation plan and timeline;
- (2) If the Corporation approves the draft compliance agreement, including any modifications suggested by the recipient or the Corporation, then it shall be memorialized in a final compliance agreement signed by the Corporation and the recipient, which shall stay these proceedings;
- (3) If the recipient completes the terms of the written compliance agreement in a time and manner that is satisfactory to the Corporation, then the Corporation shall withdraw the preliminary determination; and
- (4) If the Corporation determines at any time that the recipient has not presented an acceptable draft compliance agreement, or has not fulfilled any terms of the final compliance agreement, then the Corporation shall notify the recipient in writing. Within 15 calendar days of that notice, the Corporation shall modify or affirm the preliminary determination as a draft final decision. The draft final decision shall summarize these attempts at resolution. The draft final decision need not engage in a detailed analysis of the failure to resolve the substantial noncompliance.

(b) A recipient may submit written materials in opposition to the preliminary determination, request an informal conference, or both, as follows:

(1) for terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(2) for limited reductions in funding, within 10 business days of receipt of the preliminary determination.

(c) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held,. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of the Corporation.

(d) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level equivalent to the level of an office director or higher.

(e) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) If an informal conference is conducted or written materials are submitted in opposition to the proposed determination by the recipient, or both, the Corporation shall consider any written materials and any oral presentation or written materials submitted by the recipient at an informal conference. Based on any of these materials or the informal conference, or both, the Corporation shall modify, withdraw, or affirm the preliminary determination through a draft final decision in writing, which shall be provided to the recipient within the later of 15 calendar days after the conclusion of the informal conference or after the recipient of written materials in opposition to the proposed determination (when no informal conference is requested). Except for decisions to withdraw the preliminary determination, the draft final decision shall include a summary of the issues raised in the informal conference and presented in any written materials. The draft final decision need not engage in a detailed analysis of all issues raised.

(g) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, the Corporation shall notify the recipient that no further appeal or review will be available under this part and may proceed to issue the final decision.

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within the later of: 30 calendar days of its receipt of the preliminary

determination, or 15 calendar days of receipt of the draft final decision issued under § 1606.7, as the case may be.

(b) Within 10 business days after receipt of a request for a hearing, the Corporation shall notify the recipient 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 the Corporation. The time, date, and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action, and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is 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.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 calendar days after the Corporation receives the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred.

§ 1606.9 Recommended decision for a termination or debarment.

(a) For termination or debarment hearings under § 1606.8, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision to the recipient and the Corporation, which may:

- (1) Terminate financial assistance to the recipient commencing as of a specific date;
- (2) Impose a limited reduction of funding commencing as of a specific date;
- (3) Continue the recipient's current level of financial assistance under the grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or
- (4) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision for a termination, debarment, or limited reduction of funding.

(a) If neither the Corporation nor the recipient requests review by the President of a draft final decision pursuant to § 1606.7 or a recommended decision pursuant to § 1606.9, as provided for in this part, within 10 business days after receipt by the recipient, then the Corporation shall issue to the recipient a final decision containing either the draft final decision or the recommended decision, as the case may be. No further appeal or review will be available under this part.

(b) The recipient or the Corporation may seek review by the President of a draft final decision or a recommended decision. A request shall be made in writing within 10 business days after receipt of the draft final decision or recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the administrative record of the proceedings, including the appeal to the President, and any additional submissions,

either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(d) For an appeal of a draft final decision involving a limited reduction of funding pursuant to § 1606.7 (for which there is no right to a hearing under § 1606.8) the President may not review the appeal if the President has had prior involvement in the proceedings under this part. If the President cannot review the appeal, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1606.5(b) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the proceedings under this part.

(e) As soon as practicable after receipt of the request for review of a draft final decision or a recommended decision, but not later than 30 calendar days thereafter, the President or designee shall adopt, modify, or reverse the draft final decision or the recommended decision, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9, this decision shall conform to the requirements of § 1606.9(b).

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions in the same hearing.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommended decision shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in

writing, that the hearing officer may request. The recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommended decision within 10 business days of receipt of the recommended decision, the decision shall become final and the final decision shall be issued by the Corporation to the recipient within 5 business days.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in § 1606.11(c), any period of time provided in these rules may, upon good cause shown and determined, be extended in writing:

(1) By the Corporation, unless a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued; or

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation or imposing a limited reduction of funding.

§ 1606.13 Interim and other funding. reprogramming, implementation.

(a) Pending the completion of termination or limited reduction of funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract for financial assistance with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction of funding, the recipient loses all rights to the terminated or reduced funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize closeout or transition funding, or both, if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) The Corporation has sole discretion to determine the manner in which the final decision is implemented. The Corporation's discretion includes, but is not limited to the decision to pro-rate the amount of funds reduced over the remaining disbursements in the funding term or deduct the sum in a single disbursement, or any other method the Corporation deems appropriate.

(e) Funds recovered by the Corporation pursuant to a termination or limited reduction of funding shall be reallocated by the Corporation for basic field purposes at its sole discretion.

§ 1606.14 Recompensation.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11.

List of Subjects in 45 CFR Part 1614

Grant programs-law
Legal services
Reporting and recordkeeping requirements

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

2. The authority citation for part 1614 continues to read as follows:

Authority: Sec. 1007(a)(2)(C) and sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

3. Amend § 1614.7 by revising paragraph (b) to read as follows:

(b) The withholding of funds under this section shall not be construed as any action under 45 CFR part 1606.

List of Subjects in 45 CFR Part 1618

Grant programs-law
Legal services

4. Revised 45 CFR part 1618 to read as follows:

PART 1618 – ENFORCEMENT PROCEDURES

Sec.

- 1618.1 Purpose.
- 1618.2 Definition.
- 1618.3 Complaints.
- 1618.4 Duties of Recipients.
- 1618.5 Duties of the Corporation.

Authority: Secs. 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e); (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

Source: [insert Federal Register citation for date of publication] unless otherwise noted.

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of 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 and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary

issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

§ 1618.2 Definitions.

(a) *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) *Violation* means a violation by the recipient of the LSC requirements.

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

(a) A recipient shall:

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the

recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, 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, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a lesser reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

List of Subjects in 45 CFR Part 1623

Administrative practice and procedure
Grant programs-law
Legal services

5. Revise 45 CFR part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.

- 1623.1 Purpose.
- 1623.2 Definitions.
- 1623.3 Grounds for suspension.
- 1623.4 Suspension procedures.
- 1623.5 Time extensions and waiver.
- 1623.6 Interim funding.

Authority: 42 U.S.C. 2996e(b)(1); Pub. L. 104-134, 110 Stat. 1321, Sec. 509; Pub. L. 105-119, 111 Stat. 2440, Sec. 501(b).

Source: [insert Federal Register citation for date of publication] unless otherwise noted.

Part 1623—SUSPENSION PROCEDURES

§ 1623.1 Purpose.

The purpose of this rule is to:

- (a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and
- (b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definitions.

- (a) For the purposes of this part the definitions in 45 CFR part 1606 shall apply and also:
- (b) *Suspension* means an action taken during the term of the recipient's current year's grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending prompt corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

- (a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of the LSC requirements, and the Corporation has reason to believe that prompt action is necessary to:
 - (1) Safeguard LSC funds; or
 - (2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.
- (b) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

- (a) Prior to a preliminary determination involving a suspension of funding, the Corporation shall designate either the President or another senior Corporation

employee to conduct any final review that is requested pursuant this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion of impartiality described in this section.

(b) When the Corporation has made a proposed determination, based on the grounds set out in section 1623.3, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

- (1) State the grounds and effective date for the proposed suspension;
- (2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;
- (3) Specify what, if any, prompt corrective action the recipient can take to avoid or end the suspension;
- (4) Advise the recipient that it may request, within 5 business days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and
- (5) Advise the recipient that, within 10 business days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(c) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 business days after the recipient's request is received.

(d) The informal meeting shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee at the level with a seniority level equivalent to the level of an office director or higher.

(e) At the informal meeting, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary. The final determination shall include a summary of the issues raised in the informal conference and presented in any written materials. The final determination need not engage in a detailed analysis of all issues raised.

(g) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(h) If a suspension lasts for more than 30 days, then the recipient may seek review of the suspension by the President. A request may be made in writing on the thirty-first day or any day thereafter, and shall state, in detail, the reasons for seeking review.

- 1) The President may not review the suspension appeal if the President has had prior involvement in the suspension proceedings. If the President cannot review, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1623.4(a) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the suspension proceedings.
- 2) The President's review shall be based on the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.
- 3) The President shall affirm, modify, or terminate the suspension through a suspension appeal decision within 15 calendar days of receipt of the appeal by the Corporation, unless the Corporation and the recipient agree to a later date.

(i) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part.

(j) Except as provided in § 1623.4(k) of this part, the total time of a suspension shall not exceed 90 calendar days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

(k) When the suspension is based on the grounds in section 1623.3(b) of this part, a recipient's funds may be suspended until an acceptable audit is completed. No appeal to the President will be available for audit-based suspensions pursuant to § 1623.3(b).

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in §§ 1623.4(i) and (j), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed

by this part ordinarily shall be concluded within 30 calendar days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be released to the recipient at the end of the suspension period.

Victor M. Fortuno,

Vice President & General Counsel.

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