

September 5, 2012



Board of Directors Legal Services Corporation c/o Mark Freedman, Senior Assistant General Counsel Office of Legal Affairs, Legal Services Corporation 3333 K Street NW. Washington, DC 20007

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

Dear LSC Board of Directors:

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

We appreciate the opportunity to comment on the proposed changes made to the January 31, 2012 Notice of Proposed Rulemaking (NPRM). We notice and appreciate that the changes have been made in response to some of the concerns raised in the public comments received to date. However, we continue to oppose the creation of additional sanctions and increasing the possible suspension period from thirty to ninety days because they (1) are unsupported by any actual need; (2) fail to consider that LSC already has sufficient tools to encourage compliance, (3) will harm dients and potential dients, (4) lack fundamental due process protections, (5) do not have necessary standards for their application and (6) were not recommended by the GAO or LSCs Fiscal Oversight Task Force. We offer the following comments to the questions raised in the Further Notice of Proposed Rulemaking.

Q1: Comments are sought on the question whether the lesser reduction procedures are better handled as proposed in the NPRM or as proposed herein

By providing that an initial decision to impose a less than five percent sanction on an LSC-funded program will be made by a person in the position of deputy director or above (1606.2(i)), allowing the program to appeal that decision to the LSC President (1606.10(b)) and including a provision that the LSC President or designee would have no prior involvement in the recommended sanction (1606.10(d)), the new proposed changes provide

additional due process and are an improvement over what was proposed in the original NPRM. We support this direction and believe LSC is heading down the right path. However, we urge the board to travel farther down

(b) Within 10 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 not be an employee of the Corporation. The hearing officer shall not have been involved in the current termination, er debarment, suspension or limited reduction in funding of more than \$10,000 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 days after 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.

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hearing; and/or (3) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) For hearings on suspensions or limited reductions in funding of more than \$10,000 under 1606.8, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may uphold, reduce or eliminate the recommended suspension or limited reduction in funding;

(c)(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.

Q3: Comments are sought on the question whether any of these proposed changes to the structure of the rule would result in substantive changes affecting terminations or debarment.

We do not notice any changes in the Further Notice of Proposed Rulemaking to the structure of the rule on terminations or debarment that would result in substantive changes.

Q4: Comments are sought on the new definitions

It is recommended that the definitions of *knowing and willful* (1606.2(b)) and *substantial violation* (1606.2(h)) be changed as mentioned in response to question 2, above.

Q5: Comments are sought on the proposed final appeal process

We recommend that suspensions and limited reductions in funding of more than \$10,000 contain the due process provisions currently in place under 1606 for terminations or sanctions of five percent and greater. See comments offered in response to question 2, above.

Q6: Comments are sought on the new proposed language for Part 1618

The board should adopt a knowing and willful standard prior to the imposition of suspensions and less than five percent sanctions, as mentioned above. We recommend that the language in 1618.5(b) be changed as follows:

1618.5 Duties of the Corporation

(b) Whenever there is substantial reason to believe that a recipient has in a knowing and willful manner committed a substantial violation of persistently or intentionally violated the LSC requirements, or, after notice, has willfully

Comments on Suspensions - 1623

Ourrently, the regulation for grant suspensions, 1623, has inadequate due process guarantees. The board should put suspensions on the right due process path as well. The procedural due process provisions proposed in the Further Notice of Proposed Rulemaking for term

(d) Corporation, when used to refer to decisions by the Legal Services Corporation, is defined in 1606.2(i).

(c) (e) Suspension means an action taken during the term of the recipient's current 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 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 an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with

(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 returned to the recipient at the end of the suspension period.

Other comments

Finally, as a technical matter, "limited reduction in funding" and "lesser reduction in funding" appear to be used interchangeably leading to the possibility of confusion. *Limited reduction in funding* is in the heading in 1606.1, defined in 1606.2(c) and is in 1606.2(e)(2)(v), 1606.3(b), 1606.7(e) and 1606.13(a)-(d). *Lesser reduction in funding* appears in 1606.1(b), 1606.3 (section heading), 1606.3(c), 1606.5(b), 1606.6(a), 1606.7(a)(ii), 1601.10 (section heading) and 1618.5(b). It is recommended that one term or phra

