

- 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

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

Limited Reductions

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