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~~§ 606.1~~

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

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- ~~(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.~~

§1606.4

- (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 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) 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 IPA 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;

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- (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 the effective date of this rule.

§ 606.5

(a) Before any final action is taken under this part a recipient's grant or contract may be terminated or a recipient may be debarred, 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 lesser reduction in funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final

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recipient within ~~10~~ 15 calendar days of the conclusion of the informal conference. The final determination shall conform to the requirements of § 1606.6(a).

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

~~§1606.8~~ **Hg** ~~fish~~.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

(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 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 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.

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(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 disbarred.

~~§ 606.9~~ ~~§ 606.9~~

(a) For termination or debarment hearings under § 1606.9 within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

- (1) Terminate financial assistance to the recipient as of a specific date; or
- (2) Continue the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; and/or
- (3) 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.

~~§ 606.10~~ ~~§ 606.10~~

(a) If neither the Corporation nor the recipient requests review by the President, a determination or a recommended decision shall become a final decision 10 calendar business days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a determination or a recommended decision. A request shall be made in writing within 10 business days after

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receipt of the 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 information in the administrative record of the

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