

## § 1605.2

### § 1605.2 Definition.

*Appeal* means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

### § 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

- (a) Discourage frivolous appeals, and
- (b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but
- (c) Shall not interfere with the professional responsibilities of an attorney to a client.

## PART 1606—TERMINATION AND DEBARMENT PROCEDURES; RE-COMPETITION

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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: 63 FR 64643, Nov. 23, 1998, 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

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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 when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, or to debar a recipient from receiving future LSC awards of financial assistance; and

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

### § 1606.2 Definitions.

For the purposes of this part:

- (a) *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 a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

- (b) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

- (c) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

- (d)(1) *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 prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

- (2) A termination does not include:

- (i) A reduction of funding required by law, including 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;

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(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR Part 1614; or

(v) A reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with regulations promulgated by the Corporation. No such reduction shall be imposed except in accordance with regulations promulgated by the Corporation.

### § 1606.3 Grounds for a termination.

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

(1) There has been a substantial violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract, and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation 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 a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section will be based on consideration of the following criteria:

(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 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 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;

(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

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authority or violated the recipient's constitutional rights; and

(iv) Was initiated after the effective date of this rule.

### § 1606.5 Termination and debarment procedures.

Before 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.

### § 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated and/or that a recipient should be debarred, the Corporation employee who has been designated by the President as the person to bring such actions (hereinafter referred to as the "designated employee") shall issue a written notice to the recipient and the Chairperson of the recipient's governing body. The notice shall:

(1) State 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 sanctions;

(4) Advise the recipient of its right to request:

(i) An informal conference under § 1606.7; and

(ii) a hearing under § 1606.8; and

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13.

(b) If the recipient does not request an informal conference or a hearing within the time prescribed in § 1606.7(a) or § 1606.8(a), the preliminary determination shall become final.

### § 1606.7 Informal conference.

(a) A recipient may submit a request for an informal conference within 30 days of its receipt of the proposed decision.

(b) Within 5 days of receipt of the request, the designated employee shall notify the recipient of the time and place the conference will be held.

(c) The designated employee shall conduct the informal conference.

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(d) At the informal conference, the designated employee and the recipient shall both have an opportunity to state their case, seek to narrow the issues, and explore the possibilities of settlement or compromise.

(e) The designated employee may modify, withdraw, or affirm the preliminary determination in writing, a copy of which shall be provided to the recipient within 10 days of the conclusion of the informal conference.

### § 1606.8 Hearing.

(a) The recipient may make 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

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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 disbarred.

### § 1606.9 Recommended decision.

(a) 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.

### § 1606.10 Final decision.

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

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

(d) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.9(b).

(e) The President's decision 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.

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(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.

(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 recommendation 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 recommendation within 10 days of receipt of the recommended decision, the decision shall become final.

(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;

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(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:

(1) By the designated employee who issued the preliminary decision until a hearing officer has been appointed;

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

(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.

### § 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination 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) After a final decision has been made to terminate a recipient's grant or contract, the recipient loses all rights to the terminated funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize termination funding 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) Funds recovered by the Corporation pursuant to a termination shall be used in the same service area from which they were recovered or will be reallocated by the Corporation for basic field purposes.

### § 1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation

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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.

### PART 1607—GOVERNING BODIES

Sec.

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AUTHORITY: 42 U.S.C. 2996f(c); Pub. L. 103-317.

SOURCE: 59 FR 65254, Dec. 19, 1994, unless otherwise noted.

#### § 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel and to insure that the recipient is accountable to its clients.

#### § 1607.2 Definitions.

As used in this part,

(a) *Attorney member* means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* means a member of a recipient's governing body or policy body.

(c) *Eligible client member* means a board member who is financially eligible to receive legal assistance under the Act and part 1611 of this chapter at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s) in accordance with written policies adopted by the recipient.

(d) *Governing body* means the board of directors or other body with authority

to govern the activities of a recipient receiving funds under § 1006(a)(1)(A) of the Act.

(e) *Policy body* means a policy board or other body established by a recipient to formulate and enforce policy with respect to the services provided under a grant or contract made under the Act.

(f) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under § 1006(a)(1)(A) of the Act.

#### § 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance and shall have a governing body which reasonably reflects the interests of the eligible clients in the area served and which consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations designated by the recipient which have an interest in the delivery of legal services to the poor.