

§ 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.

(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) 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.

(b) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (a) 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 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.

(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).

(c) 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.

(d) 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.

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:

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

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

(c) By the President at any time.

§ 1606.13 Interim funding.

(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) 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.

§ 1606.14 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 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 1625—[REMOVED AND RESERVED]

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2996g(e), 45 CFR part 1625 is proposed to be removed and reserved.

Dated: May 29, 1998.

Victor M. Fortuno,
General Counsel.

[FR Doc. 98-14772 Filed 6-3-98; 8:45 am]

BILLING CODE 7050-01-P

LEGAL SERVICES CORPORATION**45 CFR Part 1623****Suspension Procedures**

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule substantially revises the Legal Services Corporation's rule on procedures for the suspension of financial assistance to recipients to implement changes in the law governing how the Corporation deals with post-award grant disputes.

DATES: Comments should be received on or before August 3, 1998.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, 202-336-8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rule on procedures for suspending funding to LSC recipients. The Committee made several changes to the draft rule and adopted this proposed rule for publication in the **Federal Register** for public comment. This proposed rule is intended to implement major changes in the law governing how the Corporation deals with post-award grant disputes.

Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For suspensions, the Corporation could not suspend financial assistance unless the recipient had been provided reasonable notice and an opportunity to show cause why the action should not be taken. For terminations and denials of refunding,

the Corporation was required to provide the opportunity for a "timely, full and fair hearing" before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105-119, 111 Stat. 2440 (1997). Section 501(b) of the appropriations act provides that a recipient's hearing rights under sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This proposed rule implements this new law as it applies to suspensions. This proposed rule would also remove 45 CFR part 1625 from the Code of Federal Regulations as no longer consistent with applicable law.

Another proposed rule, also in this publication of the Federal Register, deals with the new law as it applies to terminations and denials of refunding. See Proposed rule 45 CFR part 1606, which would revise the Corporation's policies and procedures for terminations and proposes to add provisions dealing with debarments and recompetition.

The change in the law regarding suspensions does not mean that grant recipients have no hearing rights before their funds are suspended. Constitutional due process generally requires that a discretionary grant recipient is entitled to "some type of notice" and "some type of hearing" before its grant funding can be suspended or terminated during the grant period. Stein, *Administrative Law* at § 53.05(4). However, the new law 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. See H. Rep. No. 207, 105th Cong., 1st Sess. 140 (1997). Accordingly, under this proposed rule, the hearing procedures for suspensions have been streamlined. The changes 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 but, at the same time, recipients are provided notice and a fair opportunity to be heard before any suspension action is taken.

Section-by-Section Analysis

Section 1623.1 Purpose

This section is revised to clarify the purpose of a suspension, as opposed to other sanctions the Corporation might choose to apply to a recipient. A suspension is one of several actions that may be taken by the Corporation in a post-award grant dispute to ensure the compliance of LSC recipients with the terms of their LSC grants. A suspension is generally used by Federal agencies as a temporary withdrawal of a grantee's authority to obligate or receive grant funds, pending corrective action by the grantee or a decision by the agency to terminate the grant. Stein J., *Administrative Law* at § 53.02(3). Suspensions are intended to be used in emergency situations which require prompt action and thus are normally not subject to full administrative appeals. *Id.* For example, the Corporation might choose to suspend when quick action is necessary to safeguard against a loss of LSC funds or the Corporation believes that prompt action will bring about corrective action and prevent the likely recurrence of violations.

Section 1623.2 Definition

The definition of *suspension* is revised to clarify the nature of a suspension and the differences between a suspension and a termination. The proposed definition states that a suspension withholds funding to a recipient until the end of the suspension period. This means that when the Corporation suspends funding after a hearing under this part, it may only withhold the funds until the end of the suspension period as provided in § 1623.4(e) and (f). After the suspension period, the Corporation returns the funds to the recipient, and either begins termination proceedings or determines that the recipient is taking adequate steps to cure the problem. By contrast, a termination is a permanent taking of a recipient's financial assistance. When the Corporation terminates funding, in whole or in part, the funds are not returned to the recipient, even if the problems are cured at a later date.

Section 1623.3 Grounds for Suspension

Paragraph (a) of this section sets out the grounds for most suspensions. The underlying reason for a suspension is a substantial violation by the recipient of the terms of its LSC grant. A decision to suspend, rather than terminate, funding will usually be made when the Corporation has reason to believe that prompt action is necessary to safeguard LSC funds, effect an immediate cure for

the problem at issue, or prevent further substantive harm.

A provision setting out new proposed criteria for determining whether there has been a "substantial violation" is included in this section in paragraph (b). The current rules on suspension, termination and denial of refunding include two different *undefined* standards. Terminations or suspensions are undertaken for *substantial violations* and denial of refunding for *significant violations*. Because there has been some confusion over the years about the scope of the meaning of the two standards, the Committee included this paragraph in the rule to provide better guidance to recipients on what constitutes a violation sufficient to constitute grounds for a suspension action.

The proposed criteria include the consideration of whether the violation is intentional, the importance of the restriction or requirement violated, and whether the violation is of a serious nature rather than merely technical or minor. The Corporation would also consider whether the immediate problem is part of a history of violations by the recipient. These criteria would permit the Corporation to take action, for example, for a single serious violation.

The fourth criterion permits the Corporation to consider whether the violation was intentional. Although the Committee included this criterion in the proposed rule, it requests public comment on other standards that might be more appropriate: for example, whether the recipient "knowingly and willfully" committed the violation.

Paragraph (c) implements section 509 of the Corporation's 1996 appropriations act, which has been incorporated by the Corporation's FY 1998 appropriations act. Section 509 requires recipients to complete audits which are consistent with the guidance promulgated by the Office of Inspector General. In addition, it authorizes the Corporation, after receiving a recommendation from the OIG, to suspend funding to a recipient who fails to have an acceptable audit and allows the Corporation to continue the suspension until the recipient has completed an acceptable audit. An audit is acceptable when it is deemed to be acceptable by the OIG. This generally means that the audit is prepared according to the OIG audit guidances, which consist of the *LSC Audit Guide for Recipients and Auditors* and any relevant bulletins issued by the OIG. Pursuant to this provision, the OIG determines whether an audit is acceptable and makes a recommendation to the Corporation to suspend. The Corporation then may

suspend and the suspension will be ended when the OIG determines that the audit is acceptable.

Section 1623.4 Suspension Procedures

The suspension procedures in this section are substantially the same as in the current rule, but are set out in a new structure for clarity. However, several changes have been made.

First, references to the employee who ordered a suspension are replaced by a reference to the Corporation. Second, this section deletes the provision in § 1623.3(c) of the current rule that requires the Corporation, except for unusual circumstances, to give the recipient an opportunity to take effective corrective action before suspending funding. Instead, paragraph (a)(3) provides the Corporation the flexibility needed in extraordinary circumstances addressed by suspensions to suspend funding before corrective action has taken place. However, the Corporation must identify any corrective action the recipient can undertake to avoid or end the suspension in the proposed determination.

Paragraph (a) of this section authorizes the Corporation to issue a written proposed determination to suspend funding to the recipient. The use of "proposed" before "determination" is intended to clarify that the Corporation has not made a prejudgment but rather has reason to believe that grounds exist for a suspension. The recipient then has the burden to show cause why the suspension should not take place. The Committee seeks comments on whether the language in the rule adequately describes this intent.

The proposed determination is required to state the grounds for the action, identify the relevant facts and documents underlying the determination, specify any corrective action the recipient may take, and advise the recipient of its right to submit written materials in response to the proposed determination and to request an informal hearing with the Corporation. Paragraph (c) requires the Corporation to consider all materials and oral evidence presented under this section and, if the Corporation thereafter determines that grounds for a suspension exist, the Corporation may issue a written final determination to suspend and shall provide that determination to the recipient.

Paragraph (e) permits the Corporation to rescind or modify the terms of the final determination to suspend and, after providing written notice to the recipient, reinstate the suspension

without any additional proceedings under this part. Paragraph (e) also states that, except for suspensions for the failure of a recipient to complete an audit consistent with the guidance promulgated by the Office of Inspector General, a suspension shall not exceed 30 days, unless there is agreement between the recipient and the Corporation to extend the suspension for up to 60 days. This reflects the presumption that a suspension of too long a duration would likely endanger a recipient's ability to function. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. At some point, the Corporation should either end the suspension because the problem is solved and is unlikely to reoccur, or because the recipient is seriously attempting to come into compliance; or initiate a termination process under part 1606.

Paragraph (f) implements section 509 of Public Law 104-134, which requires that suspensions for failure to have an acceptable audit should last until the recipient has completed an acceptable audit.

Section 1623.5 Time Extension and Waiver

This section provides that extensions of time may be provided for good cause, except for the time limits in § 1623.4(e). It also permits any other provision of this part to be waived or modified by agreement of the recipient and the Corporation for good cause.

Section 1623.6 Interim Funding

Generally, this section is the same as in the current rule. It requires the Corporation to continue funding the recipient at the current level during suspension proceedings. This is necessary to prevent an injustice if the proceedings reveal that a suspension is not in order and to ensure the continued availability of legal services to the poor in the recipient's service area. Paragraph (b) provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from suspending a recipient's grant or contract with the Corporation. See *Brock v. Pierce County*, 476 U.S. 253 (1986).

List of Subjects in 45 CFR Part 1623

Administrative practice and procedures, legal services.

For reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.

- 1623.1 Purpose.
- 1623.2 Definition.
- 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).

§ 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 Definition.

For the purposes of this part, *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 the Corporation; 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) A determination of whether there has been a substantial violation for the purposes of paragraph (a) of this section

will be based on consideration of the following criteria:

- (1) The importance and number of restrictions or requirements violated;
- (2) The seriousness of the violation;
- (3) The extent to which the violation is part of a pattern; and
- (4) Whether the violation was intentional.

(c) 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) When the Corporation has made a proposed determination, based on the grounds set out in § 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, corrective action the recipient can take to avoid or end the suspension;
- (4) Advise the recipient that it may request, within 5 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 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.

(b) 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 days after the recipient's request is received.

(c) 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.

(d) 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.

(e) 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. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for up to a total of 60 days without further proceedings under this part.

(f) When the suspension is based on the grounds in § 1623.3(c), a recipient's funds may be suspended until an acceptable audit is completed.

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(e), 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 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.

§ 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) 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.

Dated: May 29, 1998.

Victor M. Fortuno,

General Counsel.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-98-3881; Notice 01]

RIN 2127-AH21

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: NHTSA is considering whether to issue a proposal to amend the Federal motor vehicle safety standard on transmission shift lever sequence to add requirements for vehicles without conventional mechanical transmission shift levers. This is in response to a petition received from BMW of North America, Inc. (BMW). BMW has been exploring the possibility of producing vehicles with electronically-controlled transmissions that do not use the conventional mechanical lever that, when engaged, places the transmission in the desired gear. Rather than conventional shift levers, these systems would employ shift mechanisms such as a rotary switch, keypad, touch screen, joystick, voice activation, or some other method. Some of these designs, however, do not comply with requirements in Standard No. 102.

DATES: Comments must be received on or before September 2, 1998.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL-401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10:00 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is (202) 366-4918 and his facsimile number is (202) 366-4329.

For legal issues: Ms. Dorothy Nakama, Rulemaking Division, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Nakama's telephone number is (202)