

§ 1606.3

45 CFR Ch. XVI (10–1–23 Edition)

Funding term means the maximum time period for an award or awards of financial assistance under section 1006(a)(1)(A) of the LSC Act provided by the Corporation to a recipient selected pursuant to the competition requirements at 45 CFR part 1634. LSC may award grants or contracts for a period of the entire funding term or for shorter periods that may be renewed or extended up to the funding term.

Knowing and willful means that the recipient had actual knowledge that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action, as the case may be.

Limited reduction of funding means a reduction of funding of less than five percent of a recipient's current level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction of funding will affect only the recipient's current year's funding.

LSC requirements means the same as that term is defined in 45 CFR Part 1618.

Receipt of materials shall mean that the materials were sent to the normal address for physical mail, email, or fax transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation email or a fax sent from an authorized person at the recipient. Receipt of materials by the LSC recipient or the Corporation is sufficient for the running of applicable time periods. Proof of receipt by the Chair of the governing body is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

Recipient means the same as the term is defined in 45 CFR Part 1600.

Substantial noncompliance means either a substantial violation, as defined in this part, or a substantial failure, as indicated at § 1606.3(a) of this part.

Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(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.

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 in the amount of five percent or greater prior to the expiration of the funding term of a recipient's current grant or contract. A partial termination will affect only the level of funding for the current grant year, unless the Corporation provides otherwise in the final decision.

Violation means a violation by the recipient of the LSC requirements.

§ 1606.3 Grounds for a termination or a limited reduction of funding.

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

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part; 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 LSC appropriations, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidelines or instructions issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is

Legal Services Corporation

§ 1606.6

not warranted, and the violation occurred less than 5 years prior to the date the recipient receives a preliminary determination pursuant to § 1606.6(a) of this part.

(c) A determination of whether there has been a substantial violation for the purposes of this part, and the magnitude of any termination, in whole or in part, or any limited reduction in funding, shall be based on consideration of the criteria set forth in the definition of “substantial violation” in § 1606.2 of this part.

§ 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 or contract 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) Any agreement or arrangement, including, but not limited to, 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 independent public accountant or other auditor 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 authority or violated the recipient's constitutional rights; and

(iv) Was initiated after December 23, 1998.

§ 1606.5 Procedures.

(a) Before any final action is taken under this part, 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 limited reduction of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the proceedings under this part so as to meet the criterion set out in § 1606.10(d) of this part.

§ 1606.6 Preliminary determination and final decision.

(a) When the Corporation has made a preliminary determination of one or more of the following, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body: that a recipient's grant or contract should be terminated, that a limited reduction of funding shall be imposed, or that a recipient should be debarred. The notice shall:

(1) State the substantial noncompliance that constitutes 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 amount and proposed effective date for the proposed action;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part;

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