

§ 1622.8

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of meeting or any portion thereof closed to the public pursuant to paragraph (h) of §1622.5, a transcript, a recording, or a set of minutes shall be made.

Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefor, including a description of each Director's views expressed on any item and the record of each Director's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by paragraph (a) of this section shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate Regional Office for a council meeting, for a period of two years after the meeting, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section that do not contain information that may be withheld under §1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this part may be pursued in accordance with part 1602 of these regulations.

§ 1622.9 Emergency procedures.

If, in the opinion of the Chairman, the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting

45 CFR Ch. XVI (10–1–24 Edition)

that the Chairman or presiding officer of the Board shall have the authority to have such members of the public who are responsible for such acts or conduct removed from the meeting.

[50 FR 30714, July 29, 1985]

§ 1622.10 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552(b), including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

PART 1623—SUSPENSION PROCEDURES

Sec.

- 1623.1 Purpose.
- 1623.2 Definitions.
- 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), 2996f(a)(3), and 2996f(d); Pub. L. 105–119, Title V, Secs. 501(b), 502, and 503, 111 Stat. 2440, 2510–11; Pub. L. 104–134, Title V, Secs. 503(f) and 509(c), 110 Stat. 1321, 1321–53, 1321–58, and 1321–59.

SOURCE: 78 FR 10098, Feb. 13, 2013, unless otherwise noted.

§ 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 Definitions.

For the purposes of this part the definitions in 45 CFR part 1606 shall apply and also:

Suspension means an action taken during the term of the recipient's current year's 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 prompt 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 the LSC requirements, 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) 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) Prior to a preliminary determination involving a suspension of funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to 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 of impartiality described in this section.

(b) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3 of this part, 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, prompt corrective action the recipient can take to avoid or end the suspension;
- (4) Advise the recipient that it may request, within 5 business 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 business 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.

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

(d) The informal meeting shall be conducted by the Corporation employee who issued the preliminary determination or any other Corporation employee with a seniority level at, or equivalent to, the level of an office director or higher.

(e) At the informal meeting, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise including implementation of corrective actions, and submit written materials.

(f) 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

§ 1623.5

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. The final determination shall include a summary of the issues raised in the informal conference and presented in any written materials. The final determination need not engage in a detailed analysis of all issues raised.

(g) 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.

(h) If a suspension lasts for more than 30 days, then the recipient may seek review of the suspension by the President. A request may be made in writing on the thirty-first day or any day thereafter, and shall state, in detail, the reasons for seeking review.

(1) The President may not review the suspension appeal if the President has had prior involvement in the suspension proceedings. If the President cannot review, or the President chooses not to do so, then the appeal shall be reviewed by either the individual designated to do so pursuant to § 1623.4(a) of this part, or by another senior Corporation employee designated by the President who has not had prior involvement in the suspension proceedings.

(2) The President's review shall be based on the administrative record of the proceedings, including the appeal to the President, 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. Upon request, the Corporation shall provide a copy of the administrative record to the recipient.

(3) The President shall affirm, modify, or terminate the suspension through a suspension appeal decision within 15 calendar days of receipt of the appeal by the Corporation, unless

45 CFR Ch. XVI (10–1–24 Edition)

the Corporation and the recipient agree to a later date.

(i) 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.

(j) Except as provided in § 1623.4(k) of this part, the total time of a suspension shall not exceed 90 calendar days, unless the Corporation and the recipient agree to a continuation of the suspension without further proceedings under this part.

(k) When the suspension is based on the grounds in § 1623.3(b) of this part, a recipient's funds may be suspended until an acceptable audit is completed. No appeal to the President will be available for audit-based suspensions pursuant to § 1623.3(b).

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(i) and (j), 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 calendar 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.

(c) 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.

§ 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) Funds withheld pursuant to a suspension shall be released to the recipient at the end of the suspension period.