

Subpart D—Removal

§ 1641.16 Removal.

Removed IPAs are prohibited from performing audit services in subsequent years under an existing contract(s) with one or more specific recipients. The affected recipient(s) shall not extend existing contracts with such IPAs. Removed IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Removed IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Procedures for removal.

(a) Before removing an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.18 through 1641.21. Such hearing shall be held entirely by written submissions, except:

(1) Additional proceedings shall be held under § 1641.21 if the debarring official finds there is a genuine dispute of material fact; and/or

(2) A meeting may be held under § 1641.20(c).

(b) A Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and the proceedings may be consolidated.

§ 1641.18 Causes for removal.

The debarring official may remove an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins;

(b) The IPA is currently debarred from contracting with any Federal agency or entity receiving Federal funds, including when the IPA has stipulated to such debarment;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to commit such an offense, and the conviction is final; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to take such action, and the judgment is final.

§ 1641.19 Notice of proposed removal.

(a) Before removing an IPA, the OIG shall send the IPA written notice of the proposed removal. The notice shall be sent in a manner that provides evidence of its receipt and shall:

(1) State that removal is being considered;

(2) Identify the reasons for the proposed removal sufficient to put the IPA on notice of the conduct or transaction(s) upon which a removal proceeding is based;

(3) Identify the regulatory provisions governing the removal proceeding; and

(4) State that removal shall be for the years remaining on the existing contract(s) between the IPA and the recipient(s).

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.20.

§ 1641.20 Response to notice of proposed removal.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed removal, including any additional specific information pertaining to the possible causes for removal.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed removal, or to otherwise resolve the pending matters. Any such meeting shall take the form that the debarring official

deems appropriate and shall be held within 20 days of the response. If the IPA requests an in person meeting, it shall be held at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for removal set forth in the notice and an acceptance of the removal. In such circumstances, without further proceedings, the debarring official may enter a final decision removing the IPA.

§ 1641.21 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.18(d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.20(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for fact finding, analysis and recommendation.

Subpart E—Decisions

§ 1641.22 Decisions of debarring official.

(a) *Standard of proof.* (1) A debarment or removal must be based on a finding that the cause or causes for debarment or removal are established by a preponderance of the evidence in the administrative record of the case.

(2) A suspension must be based on a finding that the cause or causes are established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of any information, reports, documents or other evidence identified and relied upon in the Notice of Proposed Debarment, the Notice of Proposed Suspension, or the Notice of Proposed Removal, together with any relevant material contained in the IPA's response or submitted by an affected recipient. In the case of debarment or removal, when additional proceedings are necessary to determine disputed material facts, the administrative record also shall consist of any relevant material submitted or presented at such proceedings.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarring, suspending or removing an IPA. In extraordinary circumstances, the OIG may grant an IPA an extension of the time requirements set out in this part.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarring official's decision. A copy of the decision also will be sent to the affected recipient. If the debarring official debars, suspends or removes an IPA, the decision shall:

(1) Set forth the finding(s) upon which the decision is based;

(2) Set forth the effect of the debarment, suspension or removal action and the effective dates of the action;

(3) Refer the IPA to its procedural rights of appeal and reconsideration under § 1641.24; and

(4) Inform the IPA that a copy of the debarring official's decision will be a public document and the fact of debarment, suspension or removal will be a matter of public record.

(e) If the debarring official decides that a debarment, suspension, or removal is not warranted, the Notice may be withdrawn or the proceeding may be otherwise terminated.

(f) If the debarring official deems it appropriate, the debarring official may, at any time, settle by agreement with the IPA a debarment, suspension, or removal action. Such a negotiated settlement may include the imposition of appropriate conditions on the IPA.