



TO: Operations and Regulations Committee

FROM: Mark Freedman, Senior Assistant General Counsel
Kara Ward, Assistant General Counsel

SUBJECT: Enforcement Mechanisms Rulemaking Overview

DATE: January 8, 2013

Attached for your consideration please find the enforcement mechanisms Final Rule for publication in the Federal Register and a redline comparing the final text of the amended rules with the text of the current rules. The Final Rule amends 45 CFR Parts 1606, 1614, 1618, and 1623. The Operations and Regulations Committee will have consideration of the Final Rule on the January 25, 2013, agenda. The Final Rule incorporates a number of suggestions from the last Committee meeting and from the comments submitted. Additionally, the Final Rule makes a number of technical and stylistic improvements to the rules. All of the changes are discussed in the preamble.

This package includes the following materials:

1. Final Rule:
This is the intended publication as it will appear in the Federal Register if approved by the Board, subject to any changes by the Committee or the Board. The "Supplementary Information" includes important interpretive guidance that outlines the purpose for the rulemaking and a section-by-section analysis of changes to the current rules.
2. Redline of the Final Rule:
For the Board's ease of reference, the redline comparison of the current rules and the final rules is provided. It does not reflect the incremental changes made to the document during the two notice and comment periods.

Procedural History

On January 21, 2012, LSC published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (77 Fed. Reg. 4,749). Comments were received and LSC published a summary and analysis of the comments on the LSC website on June 21, 2012. In response to the comments received, LSC revised and re-published the rule for further comment on August 7, 2012 through a Further Notice of Proposed Rulemaking (FNPRM) (77 Fed. Reg. 46,995). LSC similarly analyzed the comments on the FNPRM and posted a summary, analysis and Management

response to the comments on the LSC website on September 18, 2012, and December 19, 2012. The Committee considered the progress of the rulemaking and the comments at meetings throughout 2011 and 2012.

Per the LSC Rulemaking Protocol (67 Fed. Reg. 69,762), a draft of the Final Rule is ready for consideration by the Committee and the Board. If approved, it will be published in the Federal Register and will be effective 30 days after publication.

Summary of Major Material Changes and Additions to the Rule

a. New enforcement action: "limited reduction of funding."

The Final Rule includes a new enforcement action available to LSC to respond to instances of substantial violation (as defined in the final rule) that reduces a recipient's current year funding by less than five percent. This limited reduction of funding provides a streamlined process that excludes the formal hearing procedures required for terminations but provides for both an informal conference for possible conciliation and final review by the LSC President.

b. Informal conference and new compliance agreement option.

Board members suggested improving the options for dispute resolution within the enforcement process. The Final Rule enhances the existing informal conference process for terminations, debarments, and, now, limited reductions of funding. It also includes a new option for resolving substantial non-compliance through implementation of a written agreement for corrective actions when LSC determines that doing so would be appropriate. Satisfactory completion of the corrective actions results in a withdrawal of the proposed sanction. Otherwise LSC can proceed with the proposed sanction, subject to the recipient's remaining options for further review.

c. Extension of the maximum duration of a funding suspension to 90 days.

The Final Rule extends the maximum duration of a non-audit based suspension of funding from 30 days to 90 days. A new appeal process for review by the LSC President has been added for suspensions that last longer than 30 days.

d. Immediate special grant conditions.

The Final Rule provides authority for LSC to add special grant conditions to an ongoing grant or contract for legal assistance based on a finding of a violation of the LSC requirements.