

## § 1641.20

(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

## 45 CFR Ch. XVI (10–1–11 Edition)

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.

**§ 1641.23 Exceptions to debarment, suspension and removal.**

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, when there are compelling reasons to use a particular IPA for a specific task. Requests for such exceptions may be submitted only by the recipient requiring audit services. The Inspector General may except a contract from the effects of debarment, suspension or removal upon a written determination that a compelling reason exists for using the IPA in the particular instance.

**§ 1641.24 Appeal and reconsideration of debarring official decisions.**

(a) *Appeal and reconsideration generally.* A debarred, suspended or removed IPA may submit the debarring official's decision for appeal or reconsideration in accordance with this section. Within 60 days, IPAs shall be given notice of decisions on appeal and reconsideration. The relief, if any, granted upon appeal or reconsideration

shall be limited to the relief stated in the decision on the appeal or reconsideration.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarring official's decision.

(2) The appeal shall be filed in writing:

(i) By a debarred or removed IPA, within 30 days of receipt of the decision;

(ii) By a suspended IPA, within 15 days of receipt of the decision.

(3) The Inspector General, at his or her discretion and after determining that a compelling reason exists, may stay the effect of the debarment, suspension or removal pending conclusion of his or her review of the matter.

(c) *Reconsideration.* (1) A debarred, suspended or removed IPA may submit a request to the debarring official to reconsider the debarment, suspension or removal decision, reduce the period of debarment or removal, or terminate the suspension.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) In the case of suspension, reversal of the conviction or civil judgment upon which the suspension was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the debarment, suspension or removal was imposed; or

(v) Other reasons the debarring official deems appropriate.

(3) A request for reconsideration of a suspension which was based a conviction, civil judgment, or sanction that has been reversed may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the debarring official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

(5) The debarring official's decision on a request for reconsideration is subject to the appeal procedure set forth in paragraph (b) of this section.