

§ 18.6

28 CFR Ch. I (7-1-08 Edition)

(3) A plan or application submitted in accordance with the provisions of the Crime Control Act; the Juvenile Justice Act, the Victims of Crime Act, or the provisions of any other applicable Federal act, regulation or guideline;

the responsible agency shall notify the grantee or applicant State that all or part of its grant or subgrant will be terminated or suspended until the responsible agency is satisfied that there is no longer such failure.

(b) The notice shall contain:

(1) A statement of facts sufficient to inform the party of the reasons for the agency's proposed action;

(2) A statement of the nature of the action proposed to be taken; and

(3) A reference of the available appeal rights.

(c) If a block or formula grant applicant or recipient or a categorical grant recipient wishes to appeal any action covered by §18.5(a) it may request a review of the issues in controversy within 30 days after notice of termination, noncompliance or denial by writing to:

Office of General Counsel, office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue NW., Room 1268, Washington, DC 20531.

(d) The request for a review shall contain:

(1) A factual statement sufficient to inform the responsible agency of the nature of the issues involved;

(2) A recital of the relief requested; and

(3) A request for an oral hearing, or in the alternative, an opportunity to submit only written information or argument to a hearing officer.

(e) If the responsible agency official determines that basis for the appeal in §18.5(c) would not, if substantiated, establish a basis for grant award or continuation, the official may take final agency action on the appeal.

(f) The responsible agency or its representative may attempt to informally resolve a controversy arising under this section prior to initiating a hearing. Unless it is expressly agreed otherwise, an agreement to attempt informal resolution does not waive the right to the formal hearing.

(g) If the responsible agency or its representative does not receive a request for a review within 30 days after

notice has been sent, the opportunity for review is waived.

(h) All oral hearings requested under this section shall be held in Washington, DC, unless the hearing officer decides that the hearing could be conducted in a more expeditious, fair, or cost effective manner in another location.

(i) The responsible agency may suspend all or part of the grantee's funding pending the completion of the review process. If, at the conclusion of the review process, the responsible agency determines that the grantee is in compliance, it shall restore all previously suspended funding to the grantee.

(j) Any person may request the responsible agency official to determine whether a grantee has failed to comply with the terms of the statute under which the grant was awarded, agency regulations or the terms and conditions of the grant. The responsible agency may, in its discretion, conduct an investigation into the matter and, if warranted, make a determination of noncompliance. Only a grantee determined to be in noncompliance may request a compliance hearing.

§ 18.6 Conduct of hearings.

(a) A hearing officer appointed by the responsible agency official shall preside over the hearing. The hearing officer may be an administrative law judge, or an employee of the Department of Justice who was not involved in the administration, investigation or prosecution of the matter at issue. In hearings held under the nondiscrimination provisions of the Crime Control Act, the Juvenile Justice Act or the Victims of Crime Act, the hearing officer shall be an administrative law judge.

(b) If the hearing officer appointed is unacceptable to the appellant, it shall promptly inform the responsible agency official of the reasons for its position. The responsible agency official may select another hearing officer, or affirm the initial selection. In either case, the official shall inform the appellant of the reasons for the decision.

(c) The hearing officer shall have the following powers and duties:

Department of Justice

§ 18.7

(1) The power to hold hearings and regulate the course of the hearings and the conduct of the parties and their counsel;

(2) The power to sign and issue subpoenas and other orders requiring access to records;

(3) The power to administer oaths and affirmations;

(4) The power to examine witnesses;

(5) The power to rule on offers of proof and to receive evidence;

(6) The power to take depositions or to cause depositions to be taken;

(7) The power to hold conferences under §18.6(d) for the settlement or simplification of the issues or for any other proper purpose;

(8) The power to consider and rule upon procedural requests and other motions, including motions for default;

(9) The duty to conduct fair and impartial hearings;

(10) The duty to maintain order;

(11) The duty to avoid unnecessary delay; and

(12) All powers and duties reasonably necessary to perform the functions enumerated in subsections (1)–(11).

(d) The hearing officer may call upon the parties to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings which will expedite conduct of the hearing;

(3) Limitation of the number of witnesses and of cumulative evidence;

(4) Settlement of all or part of the issues in dispute;

(5) Such other matters as may aid in the disposition of the case.

(e) All hearings under this part shall be public unless otherwise ordered by the responsible agency official.

(f) The hearing shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, 5 U.S.C. 554–557.

(g) The responsible agency shall have the burden of going forward with the evidence and shall generally present its evidence first.

(h) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules designed to assure production of the most credible evidence available and to subject testi-

mony to cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(i) During the time a proceeding is before a hearing officer, all motions shall be addressed to the hearing officer and, if within his or her delegated authority, shall be ruled upon. Any motion upon which the hearing officer has no authority to rule shall be certified to the responsible agency official with a recommendation. The opposing party may answer within such time as may be designated by the hearing officer. The hearing officer may permit further replies by both parties.

§ 18.7 Discovery.

(a)(1) At any time after the initiation of the proceeding, the hearing officer may order, by subpoena if necessary, the taking of a deposition and the production of relevant documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties and the requirements of due process. Depositions may be taken orally or upon written questions before any person who has the power to administer oaths.

(2) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds upon which objections are made. The