

§ 37.112

29 CFR Subtitle A (7-1-06 Edition)

considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. *See* § 37.112(b)(3).

(c) *Time and place of hearing.* Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.

(d) *Judicial process; evidence.* (1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) *Evidence.* In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

§ 37.112 What procedures for initial and final decisions does the Department follow?

(a) *Initial Decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) *Exceptions; Final Decision.* (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Secretary serves notice that he or she will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Secretary and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Secretary within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Secretary no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.

(vii) Final Decision and Order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that he or she will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Secretary under this paragraph must be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination under § 37.100 or Notification

of Breach of Conciliation Agreement under §37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in §37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued under §37.112(b) constitutes final agency action.

§37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under §37.100 or Notification of Breach of Conciliation Agreement under §37.104;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIA or this part;

(c) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or

Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, under §37.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

§37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(a) The ability to comply with these regulations; and

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

§37.115 What procedures does the Department follow for post-termination proceedings?

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under §37.112(b) may at any time petition the Director to restore its eligibility to receive WIA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this