

100780 Denial of Refunding, Suspension and Termination of Contract Procedures

(a)

Purpose and Scope--This section establishes the rules and procedures governing the denial of refunding and the suspension and termination of contracts. This section shall not apply to any administrative action based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964. In case of such violations or alleged violations, the provisions of 45 CFR Part 1010 shall apply.

(b)

Definitions. (1) The term "termination" means the cancellation by the Department of state and or federal assistance in whole or in part, under a contract at any time prior to the time of completion. (2) The term "suspension" means an action taken by the Department which temporarily suspends state and/or federal assistance under the contract, pending DEO's decision to terminate the contract. (3) The term "responsible Department official" means the Director, Deputy Director, or any other official who is authorized to make the contract in questions, or the designee of any of these officials.

(1)

The term "termination" means the cancellation by the Department of state and or federal assistance in whole or in part, under a contract at any time prior to the time of completion.

(2)

The term "suspension" means an action taken by the Department which temporarily suspends state and/or federal assistance under the contract, pending DEO's decision to terminate the contract.

(3)

The term "responsible Department official" means the Director, Deputy Director, or any other official who is authorized to make the contract in questions, or the designee of any of these officials.

(c)

Failure to Comply with Contract Terms and Conditions. When a grantee has materially failed to comply with the contract terms and conditions, the Department may suspend the contract in whole or in part.

(d)

Suspension Notice. (1) The responsible Department official shall notify the grantee in writing that the Department intends to suspend a contract, in whole or in part, unless good cause is shown why the contract should not be suspended. The notice shall specify the grounds for the proposed suspension, the proposed effective date of suspension and the grantee's right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond with an attempt to show cause why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be specified in the notice of intent to suspend and shall be no less than 5 days after the notice has been sent. If the grantee requests a meeting, the responsible Department official shall set a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by the Department. In lieu of the right of the grantee to request

an informal meeting, the responsible Department official may on his/her own initiative establish a time and place for such a meeting. In no event, however, shall such a meeting be scheduled less than 7 days after the notice of intent to suspend has been sent to the grantee. The responsible Department official may extend the periods of time or dates previously referred to and shall notify the grantee of any such extension. (2) At the time the responsible Department official sends the notice of intent to suspend the grantee, he/she shall also send a copy of it to any delegate agency whose activities or failure to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in subparagraph (d) (1) of this section. The responsible Department official may give such notice to any other delegate agency. (3) Within 3 days of receipt of the notice, the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency which wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting may request permission to do so from the responsible Department official, who may in his/her discretion, grant or deny such permission. In acting upon any such request from a delegate agency, the responsible Department official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interest of the delegate agency requesting such permission appears to be adequately represented by other participants. (4) In the notice of intent to suspend, the responsible Department official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding. (5) The responsible Department

official shall consider any timely material presented to him/her during the course of the informal meeting provided for in subparagraph (d) (1) of this section, as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him/her, the responsible Department official concludes the grantee has failed to show cause why the contract should not be suspended, he/she may suspend the grant in whole or in part and under such terms and conditions as he/she shall specify. (6) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed a 30 day period unless during such period of time, termination proceedings are initiated or unless the responsible DEO official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded. (7) During a period of suspension, no new expenditures shall be made by the grantee and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Department official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency. (8) The responsible Department official may in his/her discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his/her own initiative or upon a showing satisfactory to him/her that the grantee has adequately corrected the deficiency which led to the suspension and that repetition

is not threatened. A suspension partly or fully rescinded may, in the discretion of the responsible Department official, be reimposed with or without further proceeding. Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with Department policies and procedures governing the termination of contracts or unless the responsible Department official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(1)

The responsible Department official shall notify the grantee in writing that the Department intends to suspend a contract, in whole or in part, unless good cause is shown why the contract should not be suspended. The notice shall specify the grounds for the proposed suspension, the proposed effective date of suspension and the grantee's right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond with an attempt to show cause why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be specified in the notice of intent to suspend and shall be no less than 5 days after the notice has been sent. If the grantee requests a meeting, the responsible Department official shall set a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by the Department. In lieu of the right of the grantee to request an informal meeting, the responsible Department official may on his/her own initiative establish a time and place for such a meeting. In no event, however, shall such a meeting be scheduled less than 7 days after the notice of intent to suspend has been sent to the grantee. The responsible Department official may extend

the periods of time or dates previously referred to and shall notify the grantee of any such extension.

(2)

At the time the responsible Department official sends the notice of intent to suspend the grantee, he/she shall also send a copy of it to any delegate agency whose activities or failure to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in subparagraph (d) (1) of this section. The responsible Department official may give such notice to any other delegate agency.

(3)

Within 3 days of receipt of the notice, the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency which wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting may request permission to do so from the responsible Department official, who may in his/her discretion, grant or deny such permission. In acting upon any such request from a delegate agency, the responsible Department official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interest of the delegate agency requesting such permission appears to be adequately represented by other participants.

(4)

In the notice of intent to suspend, the responsible Department official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(5)

The responsible Department official shall consider any timely material presented to him/her during the course of the informal meeting provided for in subparagraph (d) (1) of this section, as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him/her, the responsible Department official concludes the grantee has failed to show cause why the contract should not be suspended, he/she may suspend the grant in whole or in part and under such terms and conditions as he/she shall specify.

(6)

Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed a 30 day period unless during such period of time, termination proceedings are initiated or unless the responsible DEO official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(7)

During a period of suspension, no new expenditures shall be made by the grantee and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Department official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

(8)

The responsible Department official may in his/her discretion modify the terms,

condition and nature of the suspension or rescind the suspension action at any time on his/her own initiative or upon a showing satisfactory to him/her that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. A suspension partly or fully rescinded may, in the discretion of the responsible Department official, be reimposed with or without further proceeding. Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with Department policies and procedures governing the termination of contracts or unless the responsible Department official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(e)

Notice and Pre-hearing Procedures. (1) If the responsible DEO official believes a grantee's violation of the terms and conditions of its contract is sufficiently serious to warrant termination, whether or not the contract has been suspended, he/she shall state that there appears to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reason(s) result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place in accordance with paragraph (f) of this section. In the alternative, the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days, in which the grantee may request such a hearing. (2) Termination hearings shall be conducted in accordance with the provisions of paragraphs (g) and (h) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given

to a request by a grantee to advance or postpone the date of a hearing scheduled by the Department. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements. In any termination hearing, the Department shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement, the grantee shall have the burden of proving that such action was timely taken. (3) If a grantee requests that the Department hold a hearing in accordance with subparagraph (e)(1) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to the Department. The grantee shall promptly send the Department a list of the delegate agencies to which it has sent such material and the date on which it was sent. (4) If the responsible Department official pursuant to subparagraph (e)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall, within 5 days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination action and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. The grantee shall send the responsible Department official a list of all delegate agencies notified and the dates of notification. (5) If the responsible Department official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in

accordance with paragraph (g) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Department and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section. (6) The results of the proceeding and any measure taken thereafter by the Department pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing. (7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible Department official within a reasonable period of time to be fixed by him/her upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Department. (8) The responsible Department official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(1)

If the responsible DEO official believes a grantee's violation of the terms and conditions of its contract is sufficiently serious to warrant termination, whether or not the contract has been suspended, he/she shall state that there appears to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reason(s) result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place in accordance with paragraph (f) of this section. In the alternative, the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days, in

which the grantee may request such a hearing.

(2)

Termination hearings shall be conducted in accordance with the provisions of paragraphs (g) and (h) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by the Department. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements. In any termination hearing, the Department shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement, the grantee shall have the burden of proving that such action was timely taken.

(3)

If a grantee requests that the Department hold a hearing in accordance with subparagraph (e)(1) of this section, it shall send a copy of its request for such a hearing to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to the Department. The grantee shall promptly send the Department a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4)

If the responsible Department official pursuant to subparagraph (e)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall, within 5 days of its receipt of this notice, send a copy of it to all delegate

agencies which would be financially affected by the termination action and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. The grantee shall send the responsible Department official a list of all delegate agencies notified and the dates of notification.

(5)

If the responsible Department official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (g) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Department and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6)

The results of the proceeding and any measure taken thereafter by the Department pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7)

A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible Department official within a reasonable period of time to be fixed by him/her upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Department.

(8)

The responsible Department official may attempt, either personally or through a

representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(f)

Time and Place of Termination Hearings. The termination hearing shall be held in Sacramento, CA, at a time and place fixed by the responsible Department official, unless he/she determines that the convenience of the Department or of the parties or their representatives requires that another place be selected.

(g)

Termination Hearing Procedures. (1) The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraph (g), (h) and (i) of this section. (2) The presiding officer at the hearing shall be the responsible Department official. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he/she may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer, for good cause shown, determines otherwise. (A) After the notice described in subparagraph (g)(6) of this section is filed with the presiding officer, he/she shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his/her functions under this subparagraph the presiding officer may use the assistance and advise of an attorney designated by the General Counsel of the Department. The attorney designated to assist him/her however, must not have represented the Department or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter. (3) Both the Department and the grantee are entitled to present

their cases by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by subparagraph (g)(6) of this section, those stipulated in a pre-hearing conference or those agreed to by the parties. (4) In addition to the Department, the grantee, and any delegate agencies which have a right to appear, the presiding officer, in his/her discretion, may permit the participation in the proceedings of such persons or organizations as he/she deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(A) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (B) The presiding officer shall permit or deny such participation and shall give notice of his/her decision to the applicant, the grantee, and the Department and, in the case of denial, a brief statement of the reasons therefor. The presiding officer may, however, subsequently permit such participation if, in his/her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted. (C) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be

aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer. (5) All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties. (6) The responsible Department official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on in justifying termination and the Department requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy therefor shall be filed with the presiding officer. (7) The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to the Department of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing. (8) All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his/her authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person. The effective date of the notice specifying the grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of the Department. (9) Prior to the commencement of a hearing the presiding officer may, subject to the provisions of subparagraph (g)(2)(A) of this section, require the parties to meet with him/her or correspond with him/her concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing. (10) Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles

designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced by either side on the issues. (11) If the presiding officer determines that the interests of justice would be served, he/she may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his/her expense, furnish all other parties with copies of the transcript. (12) Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, State of California, or any other matter of established fact within the general knowledge of the Department. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary. (13) After the hearing has concluded, but before the presiding officer makes his/her decision, he/she shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his/her decision whether he/she has

accepted or rejected them in accordance with the provisions of paragraph(h) and (i) of this section.

(1)

The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraph (g), (h) and (i) of this section.

(2)

The presiding officer at the hearing shall be the responsible Department official. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he/she may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer, for good cause shown, determines otherwise. (A) After the notice described in subparagraph (g)(6) of this section is filed with the presiding officer, he/she shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his/her functions under this subparagraph the presiding officer may use the assistance and advise of an attorney designated by the General Counsel of the Department. The attorney designated to assist him/her however, must not have represented the Department or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(A)

After the notice described in subparagraph (g)(6) of this section is filed with the presiding officer, he/she shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his/her functions under this subparagraph the presiding officer may use the assistance and advise of an attorney designated by the General Counsel of the Department. The attorney designated to assist

him/her however, must not have represented the Department or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3)

Both the Department and the grantee are entitled to present their cases by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by subparagraph (g)(6) of this section, those stipulated in a pre-hearing conference or those agreed to by the parties.

(4)

In addition to the Department, the grantee, and any delegate agencies which have a right to appear, the presiding officer, in his/her discretion, may permit the participation in the proceedings of such persons or organizations as he/she deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material. (A) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments. (B) The presiding officer shall permit or deny such participation and shall give notice of his/her decision to the applicant, the grantee, and the Department and, in the case of denial, a brief statement of the reasons therefor. The presiding officer may, however, subsequently permit such participation if, in his/her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all

parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted. (C) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(A)

Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(B)

The presiding officer shall permit or deny such participation and shall give notice of his/her decision to the applicant, the grantee, and the Department and, in the case of denial, a brief statement of the reasons therefor. The presiding officer may, however, subsequently permit such participation if, in his/her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(C)

Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5)

All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6)

The responsible Department official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on in justifying termination and the Department requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy therefor shall be filed with the presiding officer.

(7)

The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to the Department of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8)

All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his/her authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person. The effective date of the notice specifying the grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of the Department.

(9)

Prior to the commencement of a hearing the presiding officer may, subject to the provisions of subparagraph (g)(2)(A) of this section, require the parties to meet with him/her or correspond with him/her concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10)

Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced by either side on the issues.

(11)

If the presiding officer determines that the interests of justice would be served, he/she may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his/her expense, furnish all other parties with copies of the transcript.

(12)

Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, State of California, or any other matter of established fact within the general knowledge of the Department. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13)

After the hearing has concluded, but before the presiding officer makes his/her decision, he/she shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his/her decision whether he/she has accepted or rejected them in accordance with the provisions of paragraph(h) and (i) of this section.

(h)

Decision. (1) Each decision of a presiding officer shall set forth his/her findings of fact, and conclusions, and shall state whether he/she has accepted or rejected each proposed finding of fact and conclusion committed by the parties, pursuant to subparagraph (g)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply. (2) The decision of the presiding officer may provide for continued suspension or termination of the contract in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Community Services Block Grant Act, as amended. (3) If the hearing is held by an independent hearing examiner rather than by the responsible Department official, he/she shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision or such longer period of time as the presiding officer specifies, file with the responsible Department official his/her exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible Department official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his/her own decision thereon, including the reasons therefor. The

decision of the responsible Department official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration. (4) Whenever a hearing is waived, a decision shall be made by the responsible Department official and a written copy of the final decision of the responsible Department official shall be given to the grantee. (5) The grantee may request the Director to review a final decision made by the responsible Department official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his/her designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Department official or remand the matter to the responsible Department official for further hearing or consideration. The decision of the responsible Department official will be given great weight by the Director or his/her designee during the review. During the course of his/her review, the Director or his/her designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his/her designee, the grant shall remain suspended under the terms and the conditions specified by the responsible Department official unless the responsible Department official or the Director or his/her designee determines otherwise. Every reasonable effort shall be made to complete the review by the Director or his/her designee within 30 days of receipt of the grantee's request by the Director. The Director or his/her designee may, however, extend this period of time if he/she determines that additional time is necessary for an adequate review. (6) The responsible Department official or the presiding officer of a termination hearing may alter,

eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant the subparagraph (e)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript. (7) The procedures established by this section shall not preclude the Department from pursuing other remedies authorized by law.

(1)

Each decision of a presiding officer shall set forth his/her findings of fact, and conclusions, and shall state whether he/she has accepted or rejected each proposed finding of fact and conclusion committed by the parties, pursuant to subparagraph (g)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply.

(2)

The decision of the presiding officer may provide for continued suspension or termination of the contract in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Community Services Block Grant Act, as amended.

(3)

If the hearing is held by an independent hearing examiner rather than by the responsible Department official, he/she shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision or such longer period of time as the presiding officer specifies, file with the responsible Department official his/her exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the

responsible Department official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his/her own decision thereon, including the reasons therefor. The decision of the responsible Department official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(4)

Whenever a hearing is waived, a decision shall be made by the responsible Department official and a written copy of the final decision of the responsible Department official shall be given to the grantee.

(5)

The grantee may request the Director to review a final decision made by the responsible Department official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his/her designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Department official or remand the matter to the responsible Department official for further hearing or consideration. The decision of the responsible Department official will be given great weight by the Director or his/her designee during the review. During the course of his/her review, the Director or his/her designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his/her designee, the grant shall remain suspended under the terms and the conditions specified by the responsible Department official unless the responsible Department official or the Director or his/her designee determines otherwise. Every reasonable effort shall be made to complete the review by the Director or his/her designee within 30 days of receipt of the grantee's

request by the Director. The Director or his/her designee may, however, extend this period of time if he/she determines that additional time is necessary for an adequate review.

(6)

The responsible Department official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant the subparagraph (e)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(7)

The procedures established by this section shall not preclude the Department from pursuing other remedies authorized by law.

(i)

Right to Counsel; Travel Expenses. (1) The Department and the grantee shall have the right to be represented by counsel or other authorized representatives in all proceedings under this section. Any grantee or delegate agency if authorized by resolution of their Board of Directors, may transfer sufficient funds from their current operating grants to pay for fees, travel and per diem expenses of such attorney. The fees for such attorneys shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day, exclusive of travel costs and per diem, without the prior written approval of the Department. (2) The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to subparagraph (e)(8) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current

operating grant. Such travel and per diem expenses shall conform to the policies set forth in Office of Management and Budget (OMB) Circular A-110, dated 7/30/76, and OMB Circular A-102, dated 9/12/77, and other applicable federal laws or regulations which may supercede these policies.

(1)

The Department and the grantee shall have the right to be represented by counsel or other authorized representatives in all proceedings under this section. Any grantee or delegate agency if authorized by resolution of their Board of Directors, may transfer sufficient funds from their current operating grants to pay for fees, travel and per diem expenses of such attorney. The fees for such attorneys shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day, exclusive of travel costs and per diem, without the prior written approval of the Department.

(2)

The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to subparagraph (e)(8) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in Office of Management and Budget (OMB) Circular A-110, dated 7/30/76, and OMB Circular A-102, dated 9/12/77, and other applicable federal laws or regulations which may supercede these policies.

(j)

Denial of Refunding. (1) No grantee shall be denied refunding by the Department without the Department first complying with paragraphs (e), (f), (g), (h) and (i) of this section. (2) In addition to the general requirements of subsection (a), the

Department shall obtain authority to terminate the contract of community action agency grantees or migrant and seasonal farmworker organization grantees from the Secretary of the U.S. Department of Health and Human Services pursuant to Section 676 A of the Community Services Block Grant Act, (42 U.S.C. 9905A), prior to a denial of refunding.

(1)

No grantee shall be denied refunding by the Department without the Department first complying with paragraphs (e), (f), (g), (h) and (i) of this section.

(2)

In addition to the general requirements of subsection (a), the Department shall obtain authority to terminate the contract of community action agency grantees or migrant and seasonal farmworker organization grantees from the Secretary of the U.S. Department of Health and Human Services pursuant to Section 676 A of the Community Services Block Grant Act, (42 U.S.C. 9905A), prior to a denial of refunding.

(k)

Disposition of Unexpended Funds. Upon termination, the disposition of unexpended CSBG funds and of property purchased with program funds shall be in accordance with the provisions of Section 100740 of Article 3 of these regulations, entitled Grant Closeouts for Terminated Grantees. Termination shall not affect expenditures or legally binding commitments made prior to the grantees receipt of notice of the termination provided such expenditures were made in good faith and are otherwise allowable.