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28 CFR Ch. I (7–1–13 Edition)

section 1407(F) of the Victims of Crime Act of 1984 (Victims of Crime Act).

§ 18.2 Application.

(a) These procedures apply to all appeals and hearings of State formula or block grant applicants or recipients and all existing recipients of categorical grants or cooperative agreements requested under section 802 of the Justice Assistance Act; sections 223(d), 226 and 228(e) of the Juvenile Justice Act; section 1407(F) of the Victims of Crime Act; the nondiscrimination provision of section 809 of the Crime Control Act, or the cross-referenced provisions of the Emergency Federal Law Enforcement Assistance Program. The method of notifying recipients of their non-compliance with section 809 (the nondiscrimination provision of the Crime Control Act and 28 CFR 42.208.

(b) These procedures do not apply to hearings requested under the Public Safety Officers' Benefits Act, 42 U.S.C. 3796, *et seq.* The hearing and appeal procedures available to claimants denied benefits under that Act are set forth in the appendix to 28 CFR part 32.

(c) These procedures do not apply to subgrant applicants or to recipients or third party beneficiaries of block or formula grants awarded to a State.

(d) These procedures do not apply to categorical grant applicants.

(e) These procedures do not apply to private sector/prison industry enhancement certification applicants; Regional Information Sharing Systems grant applicants; surplus Federal property certification applicants; or the State reimbursement program for Incarcerated Mariel-Cubans.

§ 18.3 Definitions.

(a) *Block or formula grant applicant or recipient* means an applicant for a grant awarded under the provisions of part D of the Crime Control Act; part B, subpart I of the Juvenile Justice Act; and sections 1403 and 1404 of the Victims of Crime Act.

(b) *Categorical grant recipient* means a public or private agency which has received a research, statistics, discretionary, technical assistance, special emphasis, training, concentration of Federal effort or other direct Federal assistance award of grant funds.

(c) *Categorical grant applicant* means a public or private agency which has applied for a research, statistics, discretionary, technical assistance, special emphasis, training, concentration of Federal effort or other direct Federal assistance award of grant funds.

(d) *Grant* includes cooperative agreements and means a direct award of financial assistance from OJP, BJA, NIJ, OJJDP, BJS or OVC.

(e) *Crime Control Act* means the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended.

(f) *Juvenile Justice Act* means the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended.

(g) *Responsible agency* means the organizational unit whose action is being appealed. This will be OJP, NIJ, BJS, OJJDP, BJA or OVC as appropriate. In hearings requested under the nondiscrimination provisions of the Crime Control Act, the responsible agency is OJP. In hearings requested to contest block or formula grant denials or terminations or categorical grant terminations, the responsible agency is the organizational unit that took the action at issue: OJP, BJA, OJJDP, NIJ, BJS or OVC.

(h) *Responsible agency official* means the Assistant Attorney General, Office of Justice Programs (OJP); the Director, Bureau of Justice Assistance (BJA); the Director, National Institute of Justice (NIJ); the Director, Bureau of Justice Statistics (BJS); the Director, Office for Victims of Crime (OVC); or the Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), as appropriate.

(i) *Sub-grant applicant or recipient* means the State agency, unit of local government or private non-profit organization which applies for, or receives, a grant from a State agency which administers a block or formula grant.

(j) *Victims of Crime Act* means the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*

§ 18.4 Preliminary hearings.

(a) A grantee determined to be in noncompliance with the nondiscrimination provisions of the Crime Control Act, the Juvenile Justice Act

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or the Victims of Crime Act may request a preliminary hearing within 90 days after receipt of the notification of noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of the request.

(c) The sole issue to be adjudicated by the hearing officer is whether the grantee is likely to prevail on the merits of the issue at a full hearing requested under 28 CFR 42.215. The grantee shall have the burden of persuading the hearing officer that the grantee is likely to prevail on the merits.

(d) The hearing officer may permit the parties to argue the issue by briefs, oral argument, or the presentation of testimony and exhibits. The hearing officer shall accept as evidence documents and other exhibits which can reasonably be authenticated and subjected to cross-examination at a full hearing.

(e) The hearing officer shall make the final decision on the issue within 15 days after the conclusion of the preliminary hearing.

§ 18.5 Hearings.

(a) Whenever the responsible agency official finds that there has been a substantial failure to comply with:

(1) The provisions of the Crime Control Act, the Juvenile Justice Act, or the Victims of Crime Act;

(2) Regulations promulgated by the responsible agency pursuant to appropriate statutory authority; or

(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