

## Department of Veterans Affairs

## § 18.9

the procedures of paragraph (c) of this section. The Department of Veterans Affairs shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department of Veterans Affairs shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary pursuant to §18.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by the Department of Veterans Affairs until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least

10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 19301, Dec. 31, 1964, as amended at 38 FR 17966, July 5, 1973. Designated subpart A at 45 FR 63268, Sept. 24, 1980, and amended at 51 FR 10384, Mar. 26, 1986]

### § 18.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §18.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §18.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department of Veterans Affairs in Washington, D.C., at a time fixed by the responsible agency official unless the official determines that the convenience of the applicant or recipient

## § 18.10

## 38 CFR Ch. I (7–1–03 Edition)

or of the Department of Veterans Affairs requires that another place be selected. Hearings shall be held before the responsible agency official or, at the official's discretion, before an administrative law judge appointed in accordance with section 3105 of Title 5, U.S.C., or detailed under section 3344 of Title 5, U.S.C.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department of Veterans Affairs shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing decision and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department of Veterans Affairs and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. 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. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 18.10.

[29 FR 19301, Dec. 28, 1964, as amended at 38 FR 17966, July 5, 1973. Designated subpart A at 45 FR 63268, Sept. 24, 1980 and amended at 51 FR 10384, Mar. 26, 1986]

### § 18.10 Decisions and notices.

(a) *Procedure on decisions by an administrative law judge.* If the hearing is held by an administrative law judge such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the administrative law judge the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official exceptions to the initial decision with reasons therefor. In the absence of exceptions, the responsible agency official may within 45 days after the initial decision serve on the applicant or recipient a notice that the decision will be reviewed. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a