

§ 1206.1-5

45 CFR Ch. XII (10-1-05 Edition)

it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible Corporation official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible Corporation official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible Corporation official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b)(6), (7), and (8) of this section. Agencies may submit written material to the responsible Corporation official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b)(6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with §1206.1-5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting

referred to in paragraph (c)(3) of this section. If the responsible Corporation official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible Corporation official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1-5 Termination.

(a) If the responsible Corporation official believes that an alleged failure to comply with any requirement stated in §1206.1-1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefore. If the reasons result in whole or substantial part from the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with §1206.1-6. In the alternative the notice shall advise the recipient 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 recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1-7 and 1206.1-8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by the Corporation. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in §1206.1-1. In any termination hearing, the Corporation shall have the burden of justifying the proposed termination action. However, if the basis

of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in §1206.1-1, the recipient shall have the burden of proving that such action was timely taken.

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

(d) If the responsible Corporation official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible Corporation official a list of all agencies notified and the date of notification.

(e) If the responsible Corporation official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with §1206.1-7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Corporation and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any subsequent measure taken by the Corporation pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible Corpora-

tion official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible Corporation official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient 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 Corporation.

(h) The responsible Corporation 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.

§1206.1-6 Time and place of termination hearings.

The termination hearing shall be held in Washington, DC, or in the appropriate Service Center or Corporation State Office, at a time and place fixed by the responsible Corporation official unless he determines that for the convenience of the Corporation, or of the parties or their representatives, requires that another place be selected.

§1206.1-7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review shall be conducted in accordance with the rules of procedure in this section and §§1206.1-8 and 1206.1-9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible Corporation official or, at the discretion of the responsible Corporation official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. 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 may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall