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to this subpart, 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 determined reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. 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. Decisions shall be based on 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 noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI, OPM may, by agreement with the other departments or agencies, when applicable, provide for the conduct of consolidated or joint hearings, and for the application to these hearings of rules or procedures not inconsistent with this subpart. Final decisions in these cases, insofar as this regulation is concerned, shall be made in accordance with § 900.410.

§ 900.410 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Director of Office of Personnel Management, for a final decision, and a copy of the initial decision or certification shall be mailed to the applicant or recipient. When the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of a notice of initial decision, file with the Director of Office of Personnel Management his exceptions to the initial decision, with his reasons therefore. In the absence of exceptions, the Director, Office of Personnel Management may, on his/her own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he/she will review the decision. On the filing of the exceptions or of notice of review, the Director, Office of Personnel Management shall review the initial decision and issue his/her own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision, subject to paragraph (e) of this section, shall constitute the final decision of OPM.

(b) *Decisions on record or review by the Office of Personnel Management.* When a record is certified to the Office of Personnel Management for decision or the Office of Personnel Management reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or when the Office of Personnel Management conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of the recipient's contentions, and a written copy of the final decision of the Office of Personnel Management will be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived pursuant to § 900.409, a decision shall be made by the Office of Personnel Management on the record and a written copy of the decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Office of Personnel Management shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by OPM.* A final decision by an official of OPM other than by the Director, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or title VI, shall promptly be

transmitted to the Director, Office of Personnel Management, who may approve the decision, vacate it, or remit or mitigate a sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain the terms, conditions, and other provisions as are consistent with and will effectuate the purposes of title VI and this subpart, including provisions designed to assure that Federal financial assistance will not thereafter be extended under the programs to the applicant or recipient determined by the decision to be in default in its performance of an assurance given by it under this subpart, or to have otherwise failed to comply with this subpart, unless and until it corrects its noncompliance and satisfies OPM that it will fully comply with this subpart.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of the order for eligibility, or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) An applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Director, Office of Personnel Management to restore fully its eligibility to receive Federal financial assistance. A request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Director, Office of Personnel Management determines that those requirements have been satisfied, he/she shall restore the eligibility.

(3) If OPM denies a request, the applicant or recipient may submit a request for hearing in writing, specifying why it believes OPM is in error. The applicant or recipient shall be given an expeditious hearing, with a decision on the record in accordance with the rules or procedures issued by OPM. The applicant or recipient shall be restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section remain in effect.

§ 900.411 Judicial review.

Action taken pursuant to section 602 of title VI is subject to judicial review as provided in section 603 of title VI.

§ 900.412 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* Regulations, orders, or like directions issued before the effective date of this subpart by OPM which impose requirements designed to prohibit discrimination against individuals on the ground of race, color, or national origin under a program to which this subpart applies, and which authorizes the suspension or termination of or refusal to grant or to continue Federal financial assistance to an applicant for or recipient of assistance under a program for failure to comply with the requirements, are superseded to the extent that discrimination is prohibited by this subpart, except that nothing in this subpart relieves a person of an obligation assumed or imposed under a superseded regulation, order, instruction, or like direction, before the effective date of this subpart. This subpart does not supersede any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp.) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as these orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in a program or situation to which this subpart is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* OPM shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies, and for which it is responsible.