

## § 627.708

(i) Was not made by that subrecipient but by an entity that received JTPA funds from that subrecipient;

(ii) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or

(iii) If fraud did exist, it was perpetrated against the subrecipient, and:

(A) The subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and

(B) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.

(3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;

(4) Final action within the recipient's appeal system has been completed; and

(5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

### § 627.708 Offset process.

(a) In accordance with section 164(d) of the Act, the primary sanction for misexpenditure of JTPA funds is repayment.

(b) A recipient may request that a debt, or a portion thereof, be offset against amounts allotted to the recipient, and retained at the recipient level for administrative costs, under the current or a future JTPA entitlement.

(1) For title II grants, any offset shall be applied against the recipient level 5 percent administrative cost set-aside only and may not be distributed by the recipient among its subrecipients.

(2) For title III grants, any such offset must be applied against that portion of funds reserved by the recipient for recipient level administration only and may not be distributed by the recipient among its subrecipients.

(c) The Grant Officer may approve an offset request, under section 164(d) of the Act, if the misexpenditures were not in violation of section 164(e)(1) of the Act.

(d) If offset is granted, the debt shall not be fully satisfied until the Grant Officer reduces amounts allotted to the State by the amount of the misexpenditure.

(e) The recipient shall not have the authority to reduce allocations to an

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SDA or SSG for misexpenditure of JTPA funds under section 164(d) of the Act.

### Subpart H—Hearings by the Office of Administrative Law Judges

#### § 627.800 Scope and purpose.

(a) The jurisdiction of the Office of the Administrative Law Judges (OALJ) extends only to those complainants identified in sections 141(c), 144(d), 164(f), and 166(a) of the Act.

(b) Actions arising under section 167 of the Act shall be handled under 29 CFR part 34.

(c) All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

#### § 627.801 Procedures for filing request for hearing.

(a) Within 21 days of receipt of a final determination imposing a sanction or corrective action or denying financial assistance, the applicant, the recipient, the SDA, the SSG, or other subrecipient, or a vendor against which the Grant Officer has imposed a sanction or corrective action may appeal the Grant Officer's determination to the OALJ. A request for a hearing shall be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, 800 K Street, NW., Suite 400, Washington, DC 20001, with one copy to the departmental official who issued the determination.

(b) The 21-day filing requirement in paragraph (a) of this section is jurisdictional. Failure to timely request a hearing acts as a waiver of the right to hearing.

(c) A request for a hearing under this section shall state specifically those issues of the final determination upon which review is requested. Those provisions of the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations promulgated thereunder, grant or other agreement under the Act fairly raised in the