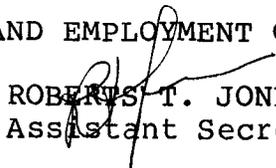


U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION Audits/Appeals
	CORRESPONDENCE SYMBOL TC
	DATE October 21, 1988

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 2-88

FROM:  ROBERT T. JONES
 Assistant Secretary of Labor

SUBJECT: Appeal Rights for Federal Assistance Grantees

1. Purpose: To provide notice of the type of appeal available to entities receiving Federal assistance grants from the Employment and Training Administration (ETA) whose appeal rights and procedures are not established elsewhere in statutes and regulations. This action by ETA is part of a larger effort to establish standard procedures for all Department of Labor (DOL) agencies in areas of audit resolution and appeal.

2. References: 29 C.F.R. Subpart 96.6 (53 FR 5966, February 26, 1988).

3. Background: On February 26, 1988, the Department of Labor's (DOL's) final administrative requirements for audit were published in the Federal Register at 53 FR 5966 (to be codified in 29 C.F.R. Part 96). Section 96.603 of this Part sets forth procedures by which grantees may appeal final determinations by DOL officials responsible for audit resolution as a result of audits, where such appeal rights are not established elsewhere in statutes and regulations administered by DOL or its sub-agencies.

The grantor agency is to determine which of two appeal options the grantee may use to appeal the final determinations of the grant officer. The two options listed in 29 C.F.R. Section 96.603 are: (a) appeal to the head of the grantor agency, or his/her designee, for which the audit was conducted; (b) appeal to the DOL's Office of Administrative Law Judges. All grants within the same grant program are to follow the same appeal procedure.

4. Policy on Appeal Procedure: In accordance with 29 C.F.R. Section 96.603, the ETA has made its determination with respect to the specific appeal procedure to be used by all entities receiving Federal assistance grants from the ETA and whose appeal rights and procedures are not established elsewhere in statutes and regulations. Such entities may appeal final audit determinations of the ETA grant

RESCISSIONS	EXPIRATION DATE Continuing
-------------	-------------------------------

DISTRIBUTION

officer to the DOL Office of Administrative Law Judges (OALJ). This includes final audit determinations relating to grants for the administration of the Federal-State unemployment compensation program and related Federal unemployment benefit and allowance programs, the Senior Community Employment Service Program, the Work Incentive Program and the Targeted Jobs Tax Credit Program.

Procedures for this OALJ-type of appeal are set forth in 29 C.F.R. Section 96.603(b), subsections (1) through (5), as follows:

(1) Jurisdiction-(i) Request for hearing. Within 21 days of receipt of the grant officer's final determination, the grantee may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, with a copy to the grant officer who signed the final determination. The Chief Administrative Law Judge shall designate an administrative law judge to hear the appeal.

(ii) Statement of issues. The request for a hearing shall be accompanied by a copy of the final determination, if issued, and shall specifically state those portions of the final determination upon which review is requested. Those portions of the final determination not specified for review shall be considered resolved and not subject to further review.

(iii) Failure to request review. When no timely request for a hearing is made, the final determination shall constitute final action by the Secretary of Labor and shall not be subject to further review.

(2) Conduct of hearings. The DOL Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR Part 18, shall govern the conduct of hearings under...[29 C.F.R. Section 96.603(b)].

(3) Decision of the administrative law judge. The administrative law judge should render a written decision no later than 90 days after the closing of the record.

(4) Filing exceptions to decision. The decision of the administrative law judge shall constitute final action by the Secretary of Labor, unless, within 21 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary of Labor, specifically identifying the procedure or finding of fact, law, or policy with which exception is taken. Any exceptions not specifically urged shall be deemed to have been waived. Thereafter, the decision of the administrative law judge shall become the decision of the Secretary of Labor, unless the Secretary of Labor, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(5) Review by the Secretary of Labor. Any case accepted for review by the Secretary of Labor shall be decided within 180 days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary of Labor.

5. Effective Date: This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. Promulgation: This Guidance Letter will be published in the Federal Register.

7. Inquiries: Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535-0704.