

Chapter 122:12-1 Termination of Home Weatherization Assistance Programs

122:12-1-01 Definition.

As used in these ~~se~~ rules ~~of the "Home Weatherization Assistance Program,"~~ "Termination" means action taken by the Director of the Development Services Agency (the "Director") office of energy efficiency in the community development division ("OEE/CDD") to terminate the grantee's grant and cease payment in whole or in part after a public hearing ~~on the record~~.

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122:12-1-02 Termination of home weatherization assistance program funding.

(A) ~~Termination in general.~~ The ~~deputy-Director~~ director of the community development division may terminate home weatherization assistance program ("HWAP") funding to a grantee in any of the following instances:

(1) The ~~deputy-D~~ director of the community development division determines that the governing board of the grantee cannot or will not take the necessary action to bring the eligible entity grantee into compliance with the terms of its underlying grant agreement with the Director with applicable requirements of 10 C.F.R. 600 with the requirements of any applicable program statute or rule, or with any other term or condition of HWAP funding within the time provided in the grant agreement, allowed by the community development division through its office of energy efficiency ("OEE/CDD").

(2) The ~~deputy-D~~ director of the community development division determines that the nature or extent of noncompliance is extreme and warrants immediate termination of HWAP funding.

(3) The grantee ceases to exist or becomes legally incapable of performing its responsibilities under the grant agreement.

(B) The ~~deputy-D~~ director of the community development division shall provide, by certified mail, a written "Notification of Intent to Terminate" to the governing board of the grantee. The notification shall include the charges-reasons for such proposed ~~action. Sections~~ action; sections of the statutes, rules, regulations or contractual obligations ~~that with which~~ the grantee ~~is charged~~ has not complied with violating; a statement informing the grantee of its ~~right to request opportunity for a public hearing on the concerning the~~ proposed termination by making a written request within thirty days of the time of the mailing of the notice. The notice shall also inform ~~the party that~~ the grantee it may be represented by an attorney or by such other representative as designated by a majority of the governing board of the grantee.

(C) When any notice required by this rule to be sent by certified mail is returned because of inability to deliver, the notice required shall be sent by ordinary mail evidenced by a certificate of mailing to the chairperson of the grantee.

(D) The failure of the ~~deputy Director of the community development division~~ to give notice in the manner provided in this rule shall invalidate any termination ~~order~~decision, ~~entered pursuant to such hearing~~.

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122:12-1-03 Conduct of hearing.

(A) The hearing shall be held within thirty-sixty days of the grantee's request, but not prior to fourteen days, of the date of the "Notification of Intent to Terminate" unless otherwise agreed upon in writing by both the division Director and the grantee. Within thirty days of filing the notice, the grantee shall send all materials it desires to submit in support of its position to the Director.

(B) After receipt of grantee's supporting materials, the Director shall give the grantee reasonable notice of the date, time and place of the hearing in writing. hearing will be held at such places and at such times determined by the hearing officer to best serve the interests of the parties and the hearing office.

(C) Written or oral communications with the hearing officer by one party without the participation or notice to the other about the merits of the appeal are not permitted unless the communication concerns the hearing officer's administrative functions or procedures. The grantee shall be given the opportunity to be present, with counsel or other representation if it chooses, at the hearing. A tape recording of the hearing will be made to provide the Director with a record for additional review. The recording of the hearing shall also be available to the grantee, upon request. The grant shall be terminated if a favorable decision is not made by the Director within thirty days.

~~(D) The hearing officer may require the parties to appear at a prehearing conference to consider any of the following:~~

~~(1) Possibility of settlement;~~

~~(2) Simplifying and clarifying issues;~~

~~(3) Stipulations and admissions of facts;~~

~~(4) Limitations on evidence and witnesses that will be presented at the hearing;~~

~~(5) Any other matter that will aid in disposing of the appeal.~~

~~(E) After the hearing officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter, the parties shall present their evidence in the sequence determined by the hearing officer.~~

~~(F) When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath of affirmation administered by the hearing officer.~~

~~_(G) The hearing officer shall be a state of Ohio employee not involved in the decision to terminate.~~

~~(H) The hearing procedures shall include, but are not limited to, the following:~~

~~(1) For good cause, a hearing may be rescheduled by the hearing officer;~~

~~(2) The grantee may be represented at the hearing by: (a) an attorney; or (b) such other representative who is not an attorney and has been designated to represent the grantee by a majority of the governing board;~~

~~(3) To introduce into the record documentary evidence and bring witnesses to the hearing;~~

~~(4) To have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the state, contractor or a subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;~~

~~(5) To question any witnesses or parties;~~

~~(6) The hearing officer shall not be bound by the "Ohio Rules of Evidence" and shall prescribe the conduct of the hearing;~~

~~(7) A transcript of the hearing will be made;~~

~~(8) Additional procedures may be set forth by the hearing officer or at the request of the parties if approved by the hearing officer in whose sole discretion hearing procedures shall rest.~~

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122:12-1-04 Decision requirements.

~~(A) The hearing officer shall, Wwithin fifteen ~~thirty~~ calendar days following the hearing, the Director shall provide the deputy director of the community development division and the chairperson of the governing board of the grantee with a proposed written decision by mailing a copy of the decision by certified mail, return receipt requested, to the chairperson of the governing board of the grantee. ~~—A proposed written decision shall include findings of facts and regulations supporting such action. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record, and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.~~~~

~~_(B) Within seven calendar days of the receipt of the written decision of the hearing officer, the deputy director of the community development division shall provide the director of the Ohio department of development with a written recommendation.~~

~~_(C) Within fifteen calendar days of the receipt of the written recommendation of the deputy director of the community development division, the director of the Ohio department of development, or his designee who shall not be an officer or employee within the community development division, shall issue a final decision on behalf of the state.~~

~~_(D) The deputy director of the community development division shall give prompt notice of the final decision of the director of the Ohio department of development by mailing a copy of the decision by certified mail, return receipt requested, to the chairperson of the governing board of the grantee.~~

(E) In the event of a final decision to terminate funding, the ~~deputy D~~director of the community development division, in accordance with 10 C.F.R. 600, shall provide notification of the effective date of termination and close-out instructions to the chairperson of the governing board of the grantee within seven days of the final decision of the ~~D~~director of the Ohio department of development.

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