

ALABAMA DEPARTMENT OF  
ECONOMIC AND COMMUNITY AFFAIRS  
COMMUNITY SERVICES DIVISION  
ADMINISTRATIVE CODE

CHAPTER 305-2-3  
ELIGIBLE ENTITY FAIR HEARING POLICY AND PROCEDURE

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305-2-3-.01      Purpose.

This regulation implements Section 675 (c) (11) of the Community Services Block Grant Act [Public Law 97-35, as amended; 42 U.S.C. §9904(c) (11)], establishes and defines the Eligible Entity Fair Hearing Policy and Procedure for the ADECA Community Services Division, establishes and defines fair hearing requirements for eligible entities that receive Community Services Block Grant funding from ADECA pursuant to said Community Services Block Grant Act, implements the Eligible Entity Fair Hearing Policy and Procedure requirements for the ADECA Community Services Division, and defines ADECA and eligible entity recipient responsibilities for implementation and compliance with this policy and these procedural requirements.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9904(c) (11).

**History:** **Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

305-2-3-.02      Effective Date.

The effective date of this policy and procedure shall be immediately.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9904(c) (11).

**History:** **Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

### 305-2-3-.03 Definitions.

(1) Agency/ADECA. The Alabama Department of Economic and Community Affairs (ADECA).

(2) Application. The Community Services Block Grant application submitted annually to the Secretary of the United States Department of Health and Human Services by the State of Alabama, Alabama Department of Economic and Community Affairs (ADECA), and/or the Community Services Division of ADECA.

(3) Chief Executive Officer of the State. The Governor of the State of Alabama.

(4) Community Services Block Grant Act. The Community Services Block Grant Act, Public Law 97-35, as amended; 42 U.S.C. §9901 *et seq.*

(5) Community Services Block Grant Funds. Federal grant funds received by the State of Alabama, Alabama Department of Economic and Community Affairs (ADECA), and/or the Community Services Division of ADECA pursuant to submission of an annual grant application to the Secretary of the United States Department of Health and Human Services, which grant funds are then awarded among the eligible entities within the State of Alabama pursuant to the Community Services Block Grant Act and the grant regulations promulgated by the United States Department of Health and Human Services, ADECA, and/or the Community Services Division of ADECA.

(6) Community Services Division. The Community Services Division of the Alabama Department of Economic and Community Affairs (ADECA).

(7) Director. The Director of the Alabama Department of Economic and Community Affairs (ADECA).

(8) Eligible Entity. An officially designated community action agency or community action program as defined in the Community Services Block Grant Act, which agency or program is presently operating within the State of Alabama, and which agency or program receives funding through ADECA and/or the Community Services Division of ADECA from funds provided by the Community Services Block Grant Act.

(9) Fiscal Year. The annual budget and grant administration period which begins on October 1 and ends on September 30 of the following year.

(10) For Cause.

(a) For purposes of making a determination with respect to a funding reduction, the term "for cause" shall include:

1. a statewide redistribution of funds under the Community Services Block Grant Program chapter, codified at 42 U.S.C.S. §§9901, *et seq.*, to respond to:

(i) the results of the most recently available census or other appropriate data;

(ii) the establishment of a new eligible entity;

(iii) severe economic dislocation;

2. the failure of an eligible entity to comply with the terms of its agreement to provide services under the Community Services Block Grant Program chapter, codified at 42 U.S.C.S. §§9901, *et seq.*

(b) For purposes of making a determination with respect to a termination, the term "for cause" shall include the material failure of an eligible entity to comply with the terms of its agreement and community action plan to provide services under the Community Services Block Grant Program chapter, codified at 42 U.S.C.S. §§ 9901, *et seq.*

(11) Hearing Officer. The Director of ADECA shall request that the Attorney General appoint a hearing officer who shall be responsible for conducting and overseeing an eligible entity fair hearing described in this policy and procedure, and who shall make recommendations to the Director of ADECA on possible reduction or termination actions described herein.

(12) Notice of Intent. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, or by telex, telegram, personal delivery, or other mode of written communication as the Director of ADECA shall so prescribe, to the last known address of an eligible entity, its identified counsel, its agent or agency for service of process. The notice of intent shall be deemed to have been received by the addressee five days after being properly sent to the eligible entity's or its designee's last known address.

(13) Subgrantee. An eligible entity as defined hereinabove, which is presently receiving or has in the past received Community Service Block Grant funds from the State of Alabama, ADECA, and/or the Community Services Division of ADECA.

**Author:****Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.**History: Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.**305-2-3-.04      Coverage.**

This policy and procedure shall apply to eligible entities, and subgrantees who have participated in, or who are presently participating in, or who may reasonably be expected to participate in the Community Services Block Grant Act program, and/or receive grant funds pursuant thereto, as administered by the State of Alabama, ADECA, and/or the Community Services Division of ADECA.

**Author:****Statutory Authority:** : P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.**History: Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.**305-2-3-.05      Fair Administrative Hearing Policy.**

(1) The State of Alabama, ADECA, and/or the Community Services Division of ADECA shall not reduce or terminate, nor make any attempts at reducing or terminating, the funding of an eligible entity or a subgrantee who is receiving grant funds within the State of Alabama under or pursuant to the Community Services Block Grant Act, and its rules and regulations, without due process in accordance with the Community Services Block Grant Act, nor without a proper determination or confirmation of cause issued by the Secretary of the United States Department of Health and Human Services. In order to protect and further the public interest, it is the policy of the State of Alabama, ADECA, and the Community Services Division of ADECA to conduct business only with responsible persons of eligible entities, and subgrantees. Fair hearings are discretionary on the part of eligible entities but serious actions that, when taken in accordance with this policy and procedure, are appropriate means to implement this policy.

(2) Action taken against an eligible entity or subgrantee by the State of Alabama, ADECA, and/or the Community Services Division of ADECA for cause shall result when the State of Alabama, ADECA, and/or the Community Services Division of ADECA determines that said eligible entity or subgrantee has failed to comply with the terms, conditions and/or obligations specified or implied in any and all grant contracts entered into pursuant to the Community Services Block Grant Act program, and/or federal and

state laws, rules and regulations governing the Community Services Block Grant Act and the grant contracts, grant programs and grant funds administered pursuant thereto by the State of Alabama, ADECA, and/or the Community Services Division of ADECA.

(3) When such action for cause is warranted, the State of Alabama, ADECA, and/or the Community Services Division of ADECA shall issue in writing to said eligible entity or subgrantee a notice of intent giving thirty calendar days' notice to said eligible entity or subgrantee that cause exists for a reduction in said eligible entity's or subgrantee's participation in, or for a termination of said eligible entity's or subgrantee's participation in present and/or future grant funding under the Community Services Block Grant Act.

(4) For purposes of the State of Alabama, ADECA, and/or the Community Services Division of ADECA making said determination that cause exists for a reduction in said eligible entity's or subgrantee's grant funding, the term "cause" shall include:

(a) A statewide redistribution of funds received pursuant to the Community Services Block Grant Act to respond to any of the following:

1. The results of the most recently available census or other appropriate data.
2. The establishment of a new eligible entity, or subgrantee.
3. Severe economic dislocation.

(b) The failure of said eligible entity, or subgrantee to comply with the terms contained in the contract/grant agreement to provide services under the Community Services Block Grant Act and/or the federal and state laws, rules and regulations issued pursuant thereto.

(5) For purposes of the State of Alabama, ADECA, and/or the Community Services Division of ADECA making said determination that cause exists for a termination of said eligible entity's or subgrantee's grant funding, the term "cause" shall include the material failure of said eligible entity or subgrantee to comply with the terms, conditions and obligations of the contract or grant agreement and community action plan to provide services under the Community Services Block Grant Act and the federal and state laws, rules and regulations issued pursuant thereto.

(6) When the State of Alabama, ADECA, and/or the Community Services Division of ADECA recommends and proposes to reduce or terminate grant funding pursuant to this policy, the State of Alabama, ADECA by and through its Director, shall put such notification in writing to said eligible entity or subgrantee,

indicating the recommended action(s) to be taken, the reason(s) for taking said recommended action(s), and the appeals procedure to be followed, to include said eligible entity's or subgrantee's opportunity to appear before an impartial hearing officer and to present evidence at a fair and impartial hearing on the record. This written notification shall be served upon said eligible entity or subgrantee by certified mail, telex, telegram, personal delivery, or other mode of written communication as the Director of ADECA shall so prescribe, and shall include the following information:

(a) A written explanation of the facts of the situation, the recommended reduction or termination action(s) to be taken, the reason(s) for taking the recommended reduction or termination action(s), and the date for the recommended reduction or termination action(s) to be effective.

(b) A statement informing the eligible entity or subgrantee that it may submit a written request to the Director of ADECA within ten (10) calendar days of its receipt of the written notification of the recommended reduction or termination action(s), requesting that a fair and impartial hearing be conducted on the record in order for the eligible entity or subgrantee to present oral and/or written evidence as to why the recommended reduction or termination action(s) should not be imposed, and that this written request shall be addressed and submitted to the Director of ADECA at ADECA's main office located at 401 Adams Avenue, Room 580, Post Office Box 5690, Montgomery, Alabama 36103-5690. This statement should also inform the eligible entity or subgrantee that if it chooses to make no response to the notification of recommended reduction or termination action(s), then the decision of the State of Alabama, ADECA by and through its Director, shall be considered as a final determination on said recommended reduction or termination action(s).

(c) The written notice of the recommended reduction or termination action(s) sent to the eligible entity or subgrantee shall be signed by the Director of ADECA.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.

**History: Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

**305-2-3-.06**

**Fair Administrative Hearing Procedure.**

The following procedure will be followed in the event that an eligible entity or subgrantee submits a request for a fair and impartial hearing to be held on the record concerning the

recommended reduction or termination action(s), pursuant to subparagraph 305-2-3-.05(6)(b) herein.

(1) When the Director of ADECA receives from an eligible entity or subgrantee a written request for a fair and impartial hearing to be held on the record concerning the recommended reduction or termination action(s), the Director of ADECA shall deliver a notification in writing, addressed to said eligible entity or subgrantee, within five (5) days after receipt of the written request for a fair and impartial hearing, which notification shall be served upon said eligible entity or subgrantee by certified mail, telex, telegram, personal delivery, or other mode of written communication as the Director of ADECA shall so prescribe, and which notification shall include the following information:

A statement that said eligible entity's or subgrantee's written request for a fair and impartial hearing has been received by the Director of ADECA within the ten (10) calendar day time limit.

A second notification shall be delivered as soon as a hearing officer has been appointed. This notification shall include the following information:

(a) The name of the official who has been appointed to serve as the hearing officer for this hearing, and the scheduled date, time and location for the hearing. The scheduled hearing date shall be at least thirty (30) days following the date of the original written notification of recommended reduction or termination action(s).

(b) A statement of the facts of the situation and the recommended reduction or termination action(s) to be taken against the eligible entity or subgrantee, which constitute the subject for the fair and impartial hearing on the record.

(c) A statement informing the eligible entity or subgrantee of the name of the proper contact person within ADECA, and that contact person's ADECA mailing address and telephone number, as the designated person to contact for questions or further information concerning the scheduled hearing.

(2) On the designated date of the hearing, the hearing procedure shall be conducted at all times by the hearing officer, shall be formal in nature, shall be recorded via tape recording or other reliable mode of transcription, and shall be transcribed into a written record format which will constitute the official record of the proceedings. The hearing officer shall allow any relevant party an opportunity to ask questions, present evidence via oral statements and

written or other type of documentation, and make final statements regarding their positions on the recommended reduction or termination action(s).

(3) After each party has been allowed an opportunity to present evidence at the hearing, the hearing officer shall draw conclusions and make a determination as to whether the recommended reduction or termination action(s) should commence against the eligible entity or subgrantee. The hearing officer's conclusions and determination shall be presented in written format to the Director of ADECA within twenty (20) calendar days following the conclusion of the hearing.

(4) The Director of ADECA shall make and issue a final ruling based upon the conclusions and recommendations presented by the hearing officer within twenty (20) calendar days of receipt of said written conclusions and recommendation from the hearing officer. The final ruling shall be in writing, and shall be served upon the eligible entity or subgrantee, the Division Chief of the Community Services Division of ADECA, and the Secretary of the United States Department of Health and Human Services not later than thirty (30) calendar days following the conclusion of the hearing, by certified mail, facsimile machine (fax), telex, telegram, personal delivery, or other mode of written communication as the Director of ADECA shall so prescribe. This final ruling shall also contain a statement of all the requirements pertaining to the reduction or termination action(s), whichever the case may be, the related activities, and the return of Community Service Block Grant funds, if applicable.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.

**History: Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

**305-2-3-.07**

**Hearing Officer's Responsibilities.**

The official who shall be duly appointed to serve as a hearing officer pursuant to this policy and procedure shall do and perform any and all duties necessary to properly implement this policy in accordance with the procedure identified herein at Rule 305-2-3-.06 and as the Director of ADECA may from time to time so direct.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.

**History: Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.



**305-2-3-.08      Other Requirements.**

In accordance with this policy, the Director of ADECA shall cause the Community Services Division of ADECA to compile and maintain within the Community Services Division of ADECA a list of all eligible entities or subgrantees who have had a final determination made and directed against them in accordance with this policy and procedure.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.

**History:** **Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

**305-2-3-.09      Appeals.**

If the eligible entity or subgrantee disagrees with the final ruling issued by the Director of ADECA, then said person, eligible entity or subgrantee shall file an appeal with the Secretary of the United States Department of Health and Human Services within ten (10) calendar days of its receipt of that final ruling. Such appeal shall follow the procedures as set forth in the Community Services Block Grant Act, 42 U.S.C. §9905a, and its implementing rules and regulations as governed by the Secretary of the United States Department of Health and Human Services (HHS). ADECA shall provide HHS with relevant information for its review pursuant to said 42 U.S.C. §9905a.

**Author:**

**Statutory Authority:** P.L. 97-35, as amended; 42 U.S.C. §9901 et seq.

**History:** : **Emergency Adoption:** Filed January 15, 1997; effective January 15, 1997. **New Rule:** Filed May 9, 1997; effective June 13, 1997.

**Note: When referencing the ADECA Community Services Division Eligible Entity Fair Hearing Policy and Procedure in publications, please reference it as follows:**

**ADECA Community Services Division Eligible Entity Fair Hearing Policy and Procedure, Alabama Administrative Code, Alabama Department of Economic and Community Affairs, Rule 305-2-3-.01 through 305-2-3-.09 (1997).**