(2) When the ETA Grant Officer is resolving the finding(s) for which a waiver of liability is desired, such request shall be made no later than the informal resolution period described in § 627.606(c) of this part.

(c) A waiver of the recipient's liability can only be considered by the Grant Officer when the misexpenditure of JTPA funds:

(1) Occurred at a subrecipient level;

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

(3) If fraud did exist, it was perpetrated against the recipient/subrecipient; and:

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

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

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 164(e)(2)(A), (B), (C), and (D) of the Act.

(d) The recipient shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipient, would be inappropriate or would prove futile.

§ 627.706 Process for advance approval of a recipient's contemplated corrective actions.

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request shall include a description and an assessment of all actions taken by the subrecipient to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient where:

(1) The subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A), (B), (C), and (D) of the Act;

(2) The misexpenditure of funds:

(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 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 determination and the request for hearing are subject to review.

(d) The procedures set forth in this subpart apply in the case of a complainant who has not had a dispute adjudicated under the alternative dispute resolution process set forth in § 627.805 of this part within 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the final determination upon which review is requested, the complainant shall include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 627.802 Rules of procedure.

(a) The rules of practice and procedure promulgated by the OALJ, at subpart A of 29 CFR part 18, shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required. Technical rules of evidence shall not apply to hearings conducted pursuant to this part; however, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall apply.

(b) *Prehearing procedures.* In all cases, the ALJ should encourage the use of prehearing procedures to simplify and to clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the ALJ and shall be issued pursuant to the authority contained in section 163(b) of the Act, incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ shall not permit the introduction at the hearing of any documentation if such documentation has not been made