

§ 1304.2

45 CFR Ch. XIII (10–1–24 Edition)

not apply to any administrative action based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964. Except as otherwise provided for in this subpart, the appeals and processes in this subpart will be governed by the Departmental Appeals Board regulations at 45 CFR part 16.

§ 1304.2 Monitoring.

(a) *Areas of noncompliance.* If a responsible HHS official determines through monitoring, pursuant to section 641(A)(c)(1) and (2) of the Act, that a grant recipient fails to comply with any of the standards described in parts 1301, 1302, and 1303 of this chapter, the official will notify the grant recipient promptly in writing, identify the area of noncompliance, and specify when the grant recipient must correct the area of noncompliance.

(b) *Deficiencies.* If the Secretary determines that a grant recipient meets one of the criteria for a deficiency, as defined in section 637(2)(C) of the Act, the Secretary shall inform the grant recipient of the deficiency. The grant recipient must correct the deficiency pursuant to section 641A(e)(1)(B) of the Act, as the responsible HHS official determines.

(c) *Quality improvement plans.* If the responsible HHS official does not require the grant recipient to correct a deficiency immediately as prescribed under section 641A(e)(1)(B)(i) of the Act, the grant recipient must submit to the official, for approval, a quality improvement plan that adheres to section 641A(e)(2)(A) of the Act.

§ 1304.3 Suspension with notice.

(a) *Grounds to suspend financial assistance with notice.* If a grant recipient breaches or threatens to breach any requirement stated in §§1304.3 through 1304.5, the responsible HHS official may suspend the grant recipient's financial assistance, in whole or in part, after it has given the grant recipient notice and an opportunity to show cause why assistance should not be suspended.

(b) *Notice requirements.* (1) The responsible HHS official must notify the grant recipient in writing that ACF intends to suspend financial assistance, in whole or in part. The notice must:

(i) Specify grounds for the suspension;

(ii) Include the date suspension will become effective;

(iii) Inform the grant recipient that it has the opportunity to submit to the responsible HHS official, at least seven days before suspension becomes effective, any written material it would like the official to consider, and to inform the grant recipient that it may request, in writing, no later than seven days after the suspension notice was mailed, to have an informal meeting with the responsible HHS official;

(iv) Invite the grant recipient to voluntarily correct the deficiency; and,

(v) Include a copy of this subpart.

(2) The responsible HHS official must promptly transmit the suspension notice to the grant recipient. The notice becomes effective when the grant recipient receives the notice, when the grant recipient refuses delivery, or when the suspension notice is returned to sender unclaimed.

(3) The responsible HHS official must send a copy of the suspension notice to any delegate agency whose actions or whose failures to act substantially caused or contributed to the proposed suspension. The responsible HHS official will inform the delegate agency that it is entitled to submit written material to oppose the suspension and to participate in the informal meeting, if one is held. In addition, the responsible HHS official may give notice to the grant recipient's other delegate agencies.

(4) After the grant recipient receives the suspension notice, it has three days to send a copy of the notice to delegate agencies that would be financially affected by a suspension.

(c) *Opportunity to show cause.* The grant recipient may submit to the responsible HHS official any written material to show why financial assistance should not be suspended. The grant recipient may also request, in writing, to have an informal meeting with the responsible HHS official. If the grant recipient requests an informal meeting, the responsible HHS official must schedule the meeting within seven days after the grant recipient receives the suspension notice.

(d) *Extensions.* If the responsible HHS official extends the time or the date by which a grant recipient has to make requests or to submit material, it must notify the grant recipient in writing.

(e) *Decision.* (1) The responsible HHS official will consider any written material presented before or during the informal meeting, as well as any proof the grant recipient has adequately corrected what led to suspension, and will render a decision within five days after the informal meeting. If no informal meeting is held, the responsible HHS official will render a decision within five days after it receives written material from all concerned parties.

(2) If the responsible HHS official finds the grant recipient failed to show cause why ACF should not suspend financial assistance, the official may suspend financial assistance, in whole or in part, and under terms and conditions as he or she deems appropriate.

(3) A suspension must not exceed 30 days, unless the conditions under section 646(a)(5)(B) are applicable or the grant recipient requests the suspension continue for an additional period of time and the responsible HHS official agrees.

(4) The responsible HHS official may appoint an agency to serve as an interim grant recipient to operate the program until the grant recipient's suspension is lifted, or as otherwise provided under section 646(a)(5)(B) of the Act.

(f) *Obligations incurred during suspension.* New obligations the grant recipient incurs while under suspension are not allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allowable costs which the grant recipient could not reasonably avoid during the suspension period will be allowed if they result from obligations the grant recipient properly incurred before suspension and not in anticipation of suspension or termination. The responsible HHS official may allow third-party in-kind contributions applicable to the suspension period to satisfy cost sharing or matching requirements.

(g) *Modify or rescind suspension.* The responsible HHS official may modify or

rescind suspension at any time, if the grant recipient can satisfactorily show that it has adequately corrected what led to suspension and that it will not repeat such actions or inactions. Nothing in this section precludes the HHS official from imposing suspension again for additional 30 day periods if the cause of the suspension has not been corrected.

§ 1304.4 Emergency suspension without advance notice.

(a) *Grounds to suspend financial assistance without advance notice.* The responsible HHS official may suspend financial assistance, in whole or in part, without prior notice and an opportunity to show cause if there is an emergency situation, such as a serious risk for substantial injury to property or loss of project funds, a federal, state, or local criminal statute violation, or harm to staff or participants' health and safety.

(b) *Emergency suspension notification requirements.* (1) The emergency suspension notification must:

(i) Specify the grounds for the suspension;

(ii) Include terms and conditions of any full or partial suspension;

(iii) Inform that grant recipient it cannot make or incur any new expenditures or obligations under suspended portion of the program; and,

(iv) Advise that within five days after the emergency suspension becomes effective, the grant recipient may request, in writing, an informal meeting with the responsible HHS official to show why the basis for the suspension was not valid and should be rescinded and that the grant recipient has corrected any deficiencies.

(2) The responsible HHS official must promptly transmit the emergency suspension notification to the grant recipient that shows the date of receipt. The emergency suspension becomes effective upon delivery of the notification or upon the date the grant recipient refuses delivery, or upon return of the notification unclaimed.

(3) Within two workdays after the grant recipient receives the emergency suspension notification, the grant recipient must send a copy of the notice