

## § 1304.5

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to delegate agencies affected by the suspension.

(4) The responsible HHS official must inform affected delegate agencies that they have the right to participate in the informal meeting.

(c) *Opportunity to show cause.* If the grant recipient requests an informal meeting, the responsible HHS official must schedule a meeting within five workdays after it receives the grant recipient's request. The suspension will continue until the grant recipient has been afforded such opportunity and until the responsible HHS official renders a decision. Notwithstanding provisions in this section, the responsible HHS official may proceed to deny refunding or to initiate termination proceedings at any time even though the grant recipient's financial assistance has been suspended in whole or in part.

(d) *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 render a decision within five work days after the informal meeting.

(2) If the responsible HHS official finds the grant recipient failed to show cause why suspension should be rescinded, the responsible HHS official may continue the suspension, in whole or in part, and under the terms and conditions specified in the emergency suspension notification.

(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 to 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 either the grant recipient's emergency suspension is lifted or a new grant recipient is selected.

(e) *Obligations incurred during suspension.* Any new obligations the grant recipient incurs during the suspension period will not be allowed unless the responsible HHS official expressly authorizes them in the suspension notice or in an amendment to the suspension notice. Necessary and otherwise allow-

able costs which the grant recipient could not reasonably avoid during the suspension period will be allowed if those costs result from obligations properly incurred before suspension and not in anticipation of suspension, denial of refunding 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.

(f) *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 the 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.

### § 1304.5 Termination and denial of refunding.

(a) *Grounds to terminate financial assistance or deny a grant recipient's application for refunding.* (1) A responsible HHS official may terminate financial assistance in whole or in part to a grant recipient or deny a grant recipient's application for refunding.

(2) The responsible HHS official may terminate financial assistance in whole or in part, or deny refunding to a grant recipient for any one or for all of the following reasons:

(i) The grant recipient is no longer financially viable;

(ii) The grant recipient has lost the requisite legal status or permits;

(iii) The grant recipient has failed to timely correct one or more deficiencies as defined in the Act;

(iv) The grant recipient has failed to comply with eligibility requirements;

(v) The grant recipient has failed to comply with the Head Start grants administration or fiscal requirements set forth in 45 CFR part 1303;

(vi) The grant recipient has failed to comply with requirements in the Act;

(vii) The grant recipient is debarred from receiving federal grants or contracts; or

(viii) The grant recipient has failed to abide by any other terms and conditions of its award of financial assistance, or any other applicable laws, regulations, or other applicable federal or state requirements or policies.

(b) *Notice requirements.* (1) The responsible HHS official will notify the grant recipient and such notice will:

(i) Include the legal basis for termination or adverse action as described in paragraph (a) of this section;

(ii) Include factual findings on which the action is based or reference specific findings in another document that form the basis for termination or denial of refunding;

(iii) Cite to any statutory provisions, regulations, or policy issuances on which ACF relies for its determination;

(iv) Inform the grant recipient that it may appeal the denial or termination within 30 days to the Departmental Appeals Board, that the appeal will be governed by 45 CFR part 16, except as otherwise provided in the Head Start appeals regulations, that a copy of the appeal must be sent to the responsible HHS official, and that it has the right to request and receive a hearing, as mandated under section 646 of the Act;

(v) Inform the grant recipient that only its board of directors, or an official acting on the board's behalf can appeal the decision;

(vi) Name the delegate agency, if the actions of that delegate are the basis, in whole or in part, for the proposed action; and,

(vii) Inform the grant recipient that the appeal must meet requirements in paragraph (c) of this section; and, that if the responsible HHS official fails to meet requirements in this paragraph, the pending action may be dismissed without prejudice or remanded to re-issue it with corrections.

(2) The responsible HHS official must provide the grant recipient as much notice as possible, but must notify the grant recipient no later than 30 days after ACF receives the annual application for refunding, that it has the opportunity for a full and fair hearing on whether refunding should be denied.

(c) *Grant recipient's appeal.* (1) The grant recipient must adhere to procedures and requirements for appeals in 45 CFR part 16, file the appeal with the

Departmental Appeals Board, and serve a copy of the appeal on the responsible HHS official who issued the termination or denial of refunding notice. The grant recipients must also serve a copy of its appeal on any affected delegate.

(2) Unless funding has been suspended, funding will continue while a grant recipient appeals a termination decision, unless the responsible HHS official renders an adverse decision, or unless the current budget period is expired. If the responsible HHS official has not rendered a decision by the end of the current budget period, the official will award the grant recipient interim funding until a decision is made or the project period ends.

(d) *Funding during suspension.* If a grant recipient's funding is suspended, the grant recipient will not receive funding during the termination proceedings, or at any other time, unless the action is rescinded or the grant recipient's appeal is successful.

(e) *Interim and replacement grant recipients.* The responsible HHS official may appoint an interim or replacement grant recipient as soon as a termination action is affirmed by the Departmental Appeals Board.

(f) *Opportunity to show cause.* (1) If the Departmental Appeals Board sets a hearing for a proposed termination or denial of refunding action, the grant recipient has five workdays to send a copy of the notice it receives from the Departmental Appeals Board, to all delegate agencies that would be financially affected by termination and to each delegate agency identified in the notice.

(2) The grant recipient must send to the Departmental Appeals Board and to the responsible HHS official a list of the delegate agencies it notified and the dates when it notified them.

(3) If the responsible HHS official initiated proceedings because of a delegate agency's activities, the official must inform the delegate agency that it may participate in the hearing. If the delegate agency chooses to participate in the hearing, it must notify the responsible HHS official in writing within 30 days of the grant recipient's appeal. If any other delegate agency, person, agency or organization wishes

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to participate in the hearing, it may request permission to do so from the Departmental Appeals Board.

(4) If the grant recipient fails to appear at the hearing, without good cause, the grant recipient will be deemed to have waived its right to a hearing and consented to have the Departmental Appeals Board make a decision based on the parties' written information and argument.

(5) A grant recipient may waive the hearing and submit written information and argument for the record, within a reasonable period of time to be fixed by the Departmental Appeals Board.

(6) The responsible HHS official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the hearing.

(g) *Decision.* The Departmental Appeals Board's decision and any measure the responsible HHS official takes after the decision is fully binding upon the grant recipient and its delegate agencies, whether or not they actually participated in the hearing.

#### § 1304.6 Appeal for prospective delegate agencies.

(a) *Appeal.* If a grant recipient denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grant recipient's decision or inaction.

(b) *Process for prospective delegates.* To appeal, a prospective delegate must:

(1) Submits the appeal, including a copy of the funding application, to the responsible HHS official within 30 days after it receives the grant recipient's decision; or within 30 days after the grant recipient has had 120 days to review but has not notified the applicant of a decision; and,

(2) Provide the grant recipient with a copy of the appeal at the same time the appeal is filed with the responsible HHS official.

(c) *Process for grant recipients.* When an appeal is filed with the responsible HHS official, the grant recipient must respond to the appeal and submit a copy of its response to the responsible HHS official and to the prospective delegate agency within 30 work days.

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(d) *Decision.* (1) The responsible HHS official will sustain the grant recipient's decision, if the official determines the grant recipient did not act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements.

(2) The responsible HHS official will render a written decision to each party within a reasonable timeframe. The official's decision is final and not subject to further appeal.

(3) If the responsible HHS official finds the grant recipient did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grant recipient will be directed to reevaluate their applications.

#### § 1304.7 Legal fees.

(a) An agency is not authorized to charge to its grant legal fees or other costs incurred to appeal terminations, reductions of funding, or denials of applications of refunding decisions.

(b) If a program prevails in a termination, reduction, or denial of refunding decision, the responsible HHS official may reimburse the agency for reasonable and customary legal fees, incurred during the appeal, if:

(1) The Departmental Appeals Board overturns the responsible HHS official's decision;

(2) The agency can prove it incurred fees during the appeal; and,

(3) The agency can prove the fees incurred are reasonable and customary.

#### Subpart B—Designation Renewal

##### § 1304.10 Purpose and scope.

The purpose of this subpart is to set forth policies and procedures for the designation renewal of Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start grant recipients be fully protected. The Designation Renewal System is established in this part to determine whether Head Start agencies deliver high-quality services to meet the educational, health, nutritional, and social needs of the children and families they