

§ 1321.35

(b) In advance of the submission to the Assistant Secretary for Aging to be considered for approval, the State agency shall submit a draft of the plan or amendment to the appropriate ACL Regional Office at least 120 calendar days before the proposed effective date of the plan or plan amendment, except in the case of a waiver request or as otherwise provided in guidance as set forth by the Assistant Secretary for Aging. The State agency shall work with the ACL Regional Office in reviewing the plan or plan amendment for compliance.

§ 1321.35 Notification of State plan or State plan amendment approval or disapproval for changes requiring Assistant Secretary for Aging approval.

(a) The Assistant Secretary for Aging shall approve a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Assistant Secretary for Aging proposes to disapprove a State plan or amendment, the Assistant Secretary for Aging shall notify the Governor in writing, giving the reasons for the proposed disapproval, and inform the State agency that it may request a hearing on the proposed disapproval following the procedures described in guidance issued by the Assistant Secretary for Aging.

§ 1321.37 Notification of State plan amendment receipt for changes not requiring Assistant Secretary for Aging approval.

The State agency shall submit an amendment not requiring Assistant Secretary for Aging approval as set forth at § 1321.31(b) to the appropriate ACL Regional Office. The ACL Regional Office shall review the amendment to confirm the contents do not require approval of the Assistant Secretary for Aging and will acknowledge receipt of the State plan amendment by notifying the head of the State agency in writing.

§ 1321.39 Appeal to the Departmental Appeals Board regarding State plan on aging.

If the Assistant Secretary for Aging intends to disapprove a State plan or

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State plan amendment, the Assistant Secretary for Aging shall first afford the State agency notice and an opportunity for a hearing. Administrative reviews of State plan disapprovals, as provided for in sections 307(c) and 307(d) of the Act (42 U.S.C. 3027(c)–(d)) are performed by the Department Appeals Board in accordance with the procedures set forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

§ 1321.41 When a disapproval decision is effective.

(a) The Assistant Secretary for Aging shall specify the effective date for reduction and withholding of the State agency's grant upon a disapproval decision from the Departmental Appeals Board. This effective date may not be earlier than the date of the Departmental Appeals Board's decision or later than the first day of the next calendar quarter.

(b) A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and shall remain in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

§ 1321.43 How the State agency may appeal the Departmental Appeals Board's decision.

A State agency may appeal the final decision of the Departmental Appeals Board disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State agency shall file the appeal within 30 days of the Departmental Appeals Board's final decision.

§ 1321.45 How the Assistant Secretary for Aging may reallocate the State agency's withheld payments.

The Assistant Secretary for Aging may disburse funds withheld from the

State agency directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part, and which contains an agreement to meet the non-Federal share requirements.

§ 1321.47 Conflicts of interest policies and procedures for State agencies.

(a) State agencies must have policies and procedures regarding conflicts of interest, in accordance with the Act and all other applicable Federal requirements. These policies and procedures must safeguard against conflicts of interest on the part of the State agency, employees, and agents of the State who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers. Conflicts of interest policies and procedures must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels, including:

(1) Ensuring that State agency employees and agents administering Title III programs do not have a financial interest in a Title III program;

(2) Removing and remedying actual, perceived, or potential conflicts that arise due to an employee or agent's financial interest in a Title III program;

(3) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in a Title III program;

(4) Ensuring that no individual, or member of the immediate family of an individual, involved in administration or provision of a Title III program has a conflict of interest;

(5) Requiring that other agencies that operate a Title III program have policies in place to prohibit the employment or appointment of Title III program decision-makers, staff, or volunteers with a conflict that cannot be adequately removed or remedied;

(6) Requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a conflict

of interest, or who has an immediate family member with a conflict of interest, which cannot be adequately removed or remedied;

(7) Ensuring that no organization which provides a Title III service is subject to a conflict of interest;

(8) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or sub-recipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value;

(9) Establishing the actions the State agency will require a Title III program to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and

(10) Documenting conflict of interest mitigation strategies, as necessary and appropriate, when a State agency or Title III program operates an Adult Protective Services or guardianship program.

(b) Individual conflicts include:

(1) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit from actions or decisions made in their official capacity;

(2) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(3) One or more conflicts between competing duties; and

(4) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

(c) Organizational conflicts include:

(1) One or more conflicts between competing duties, programs, and/or services; and

(2) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.