

§ 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 reissue 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 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.