

Subpart A — Monitoring, Suspension, Termination, Denial of Refunding, Reduction in Funding, and their Appeals

§1304.1 Purpose.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.1 (a) (b)				

(a) Section 641A(c) of the Act requires the Secretary to monitor whether a grantee meets program governance, program operations, and financial and administrative standards described in this regulation and to identify areas for improvements and areas of strength as part of the grantee’s ongoing self-assessment process. This subpart focuses on the monitoring process. It discusses areas of noncompliance, deficiencies, and corrective action through quality improvement plans.

(b) Section 646(a) of the Act requires the Secretary to prescribe procedures for notice and appeal for certain adverse actions. This subpart establishes rules and procedures to suspend financial assistance to a grantee, deny a grantee’s application for refunding, terminate, or reduce a grantee’s assistance under the Act when the grantee improperly uses federal funds or fails to comply with applicable laws, regulations, policies, instructions, assurances, terms and conditions or, if the grantee loses its legal status or financial viability. This subpart does not apply to reductions to a grantee’s financial assistance based on chronic under-enrollment procedures at section 641A(h) of the Act or to matters described in subpart B. This subpart does 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.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.2 (a) (b)				

(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 grantee fails to comply with any of the standards described in parts 1301, 1302, and 1303 of this chapter, the official will notify the grantee promptly in writing, identify the area of noncompliance, and specify when the grantee must correct the area of noncompliance.

(b) **Deficiencies.** If the Secretary determines that a grantee meets one of the criteria for a deficiency, as defined in section 637(2)(C) of the Act, the Secretary shall inform the grantee of the deficiency. The grantee 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 grantee to correct a deficiency immediately as prescribed under section 641A(e)(1)(B)(i) of the Act, the grantee 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.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.3				

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

(b) **Notice requirements.**

(1) The responsible HHS official must notify the grantee 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 grantee 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 grantee 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 grantee 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 grantee. The notice becomes effective when the grantee receives the notice, when the grantee 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 grantee's other delegate agencies.

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

(d) **Extensions.** If the responsible HHS official extends the time or the date by which a grantee has to make requests or to submit material, it must notify the grantee 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 grantee 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 grantee 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 grantee 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 grantee to operate the program until the grantee'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 grantee 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 grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations the grantee 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 grantee 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.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.4				

(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 grantee 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 grantee 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 grantee has corrected any deficiencies.

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

(3) Within two workdays after the grantee receives the emergency suspension notification, the grantee must send a copy of the notice 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 grantee requests an informal meeting, the responsible HHS

official must schedule a meeting within five workdays after it receives the grantee's request. The suspension will continue until the grantee 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 grantee'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 grantee 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 grantee 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 grantee 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 grantee to operate the program until either the grantee's emergency suspension is lifted or a new grantee is selected.**

(e) Obligations incurred during suspension. Any new obligations the grantee 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 allowable costs which the grantee 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 grantee 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.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.5				

(a) Grounds to terminate financial assistance or deny a grantee's application for refunding.

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

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

(i) The grantee is no longer financially viable;

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

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

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

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

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

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

(viii) The grantee 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 grantee 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 grantee 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 grantee 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 grantee 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 grantee as much notice as possible, but must notify the grantee 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) **Grantee's appeal.**

(1) The grantee 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 grantees must also serve a copy of its appeal on any affected delegate.

(2) Unless funding has been suspended, funding will continue while a grantee 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 grantee interim funding until a decision is made or the project period ends.

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

(e) **Interim and replacement grantees.** The responsible HHS official may appoint an interim or replacement grantee 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 grantee 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 grantee 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 grantee'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 grantee fails to appear at the hearing, without good cause, the grantee 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 grantee 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 grantee and its delegate agencies, whether or not they actually participated in the hearing.

§1304.6 Appeal for prospective delegate agencies.

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1304.6				

(a) Appeal. If a grantee denies, or fails to act on, a prospective delegate agency's funding application, the prospective delegate may appeal the grantee'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 grantee's decision; or within 30 days after the grantee has had 120 days to review but has not notified the applicant of a decision; and,

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

(c) **Process for grantees.** When an appeal is filed with the responsible HHS official, the grantee 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.

(d) **Decision.**

(1) The responsible HHS official will sustain the grantee's decision, if the official determines the grantee 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 grantee did act arbitrarily, capriciously, or otherwise contrary to law, regulation, or other applicable requirements, the grantee will be directed to reevaluate their applications.

§1304.7 Legal fees.

Head Start Performance Standard Number	Who is Responsible	Who Implements	Timelines or Ongoing	Form Name
1304.7				

(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.