

# 1303 Appeals - Module One

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45 CFR Ch. XIII (10–1–05 Edition)

Pt. 1303

**PART 1303—APPEAL PROCEDURES  
FOR HEAD START GRANTEES AND  
CURRENT OR PROSPECTIVE  
DELEGATE AGENCIES**

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**"Denial of Refunding means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision is based on a determination that the grantee has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies."**

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*Day* means the 24 hour period beginning at

AUTHORITY: 42 U.S.C. 9801 *et seq.*

SOURCE: 57 FR 59264, Dec. 14, 1992, unless otherwise noted.

## Subpart A—General

### § 1303.1 Purpose and application.

This part prescribes regulations based on section 646 of the Head Start Act, 42 U.S.C. 9841, as it applies to grantees and current or prospective delegate agencies engaged in or wanting to engage in the operation of Head Start programs under the Act. It prescribes the procedures for appeals by current and prospective delegate agencies from specified actions or inaction by grantees. It also provides procedures for reasonable notice and opportunity to show cause in cases of suspension of financial assistance by the responsible HHS official and for an appeal to the Departmental Appeals Board by grantees in cases of denial of refunding, termination of financial assistance, and suspension of financial assistance.

### § 1303.2 Definitions.

As used in this part:

*Act* means the Head Start Act, 42 U.S.C. section 9831, *et seq.*

*ACYF* means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.

*Agreement* means either a grant or a contract between a grantee and a delegate agency for the conduct of all or part of the grantee's Head Start program.

is based on a determination that the grantee

12 a.m. local time and continuing for the next 24 hour period. It includes all calendar days unless otherwise expressly noted.

**Delegate Agency** means a public or private non-profit organization or agency to which a grantee has delegated by written agreement the carrying out of all or part of its Head Start program.

**Denial of Refunding** means the refusal of a funding agency to fund an application for a continuation of a Head Start program for a subsequent program year when the decision

has improperly conducted its program, or is incapable of doing so properly in the future, or otherwise is in violation of applicable law, regulations, or other policies.

**Funding Agency** means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.

**Grantee** means the local public or private non-profit agency which has been

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Test Questions:

**Select the correct "True" or "False" option.**

1. **ACYF means the Administration on Children, Youth and Families in the Department of Health and Human Services, and includes Regional staff.** (1303.2)

True  False

2. **Funding Agency means the agency that provides funds directly to either a grantee or a delegate agency. ACYF is the funding agency for a grantee, and a grantee is the funding agency for a delegate agency.** (1303.2)

True  False

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**Office of Human Development Services, § 1303.3  
HHS**

designated as a Head Start agency under 42 U.S.C. 9836 and which has been granted financial assistance by the responsible HHS official to operate a Head Start program.

**Interim Grantee** means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year while an appeal of a denial of refunding, termination or suspension action is pending.

**Prospective Delegate Agency** means a public or private non-profit agency or organization which has applied to a grantee to serve as a delegate agency.

**Responsible HHS Official** means the official who is authorized to make the grant of financial assistance to operate a Head Start program or his or her designee.

**Submittal** means the date of actual receipt or the date the material was served in accordance with § 1303.5 of this part for providing documents or notices of appeals, and similar matters, to either grantees, delegate agencies, prospective delegate agencies, or ACYF.

**Substantial Rejection** means that a funding agency requires that the funding of a current delegate agency be reduced to 80 percent or less of the current level of operations for any reason other than a determination that the delegate agency does not need the funds to serve all the eligible persons it proposes to serve.

**Suspension** of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee.

**Termination** of a grant or delegate agency agreement means permanent withdrawal of the grantee's or delegate agency's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or delegate agency. Termination does not include:

- (1) Withdrawal of funds awarded on the basis of the grantee's or delegate agency's underestimate of the unobligated balance in a prior period;
- (2) Refusal by the funding agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation renewal, extension or supplemental award);
- (3) Withdrawal of the unobligated balance as of the expiration of a grant;
- (4) Annulment, i.e., voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

**Work day** means any 24 hour period beginning at 12 a.m. local time and continuing for 24 hours. It excludes Saturdays, Sundays, and legal holidays. Any time ending on one of the excluded days shall extend to 5 p.m. of the next full work day.

**§ 1303.3 Right to attorney, attorney fees, and travel costs.**

(a) All parties to proceedings under this part, including informal proceedings, have the right to be represented by an attorney.

(1) Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality. However, such fees may not exceed \$250.00 per day, adjusted annually to reflect the percent-age change in the Consumer Price Index for All Urban Consumers (issued by the Bureau of Labor Statistics) beginning one year after the effective date of these regulations. The grantee or delegate agency may use current operating funds to pay these costs. The fees of only one attorney may be charged to the program grant with respect to a particular dispute. Such fees may not be charged if the grantee or delegate

agency has an attorney on its staff, or if it has a retainer agreement with an attorney which fully covers fees connected with litigation. The grantee or delegate agency shall have the burden of establishing the usual and customary fees and shall furnish documentation to support that determination that is satisfactory to the responsible HHS official.

(2) A grantee or delegate agency may designate up to two persons to attend and participate in proceedings held under this Part. Travel and per diem costs of such persons, and of an attorney representing the grantee or dele-gate agency, shall not exceed those allowable under Standard Governmental Travel Regulations in effect at the time of the travel.

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Test Questions:

**Select the correct "True" or "False" option.**

3. *Interim Grantee means an agency which has been appointed to operate a Head Start program for a period of time not to exceed one year after a denial of refunding, termination or suspension.*

(1303.2)

True

False

4. *Attorney fees may be charged to the program grant in an amount equal to the usual and customary fees charged in the locality.* (1303.3)

True

False

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**§ 1303.4**

(b) In the event that use of program funds under this section would result in curtailment of program operations or inability to liquidate prior obligations, the party so affected may apply to the responsible HHS official for payment of these expenses.

to receive documents allegedly sent to it, there will be a rebuttable presumption that the documents or notices were not sent as required by this part, or as alleged by the party that failed to use the required mode of service. The presumption may be rebutted only by a showing supported by a preponderance of evidence that the material was in fact submitted in a timely manner.

(c) The responsible HHS official, upon being satisfied that these expenditures would result in curtailment of program operations or inability to liquidate prior obligations, must make payment therefore to the affected party by way of reimbursement from currently available funds.

**§ 1303.6 Successor agencies and officials.**

Wherever reference is made to a particular Federal agency, office, or official it shall be deemed to apply to any other agency, office, or official which subsequently becomes responsible for administration of the program or any portion of it.

**§ 1303.4 Remedies.**

The procedures established by subparts B and C of this Part shall not be construed as precluding ACYF from pursuing any other remedies authorized by law.

**§ 1303.7 Effect of failure to file or serve documents in a timely manner.**

**§ 1303.5 Service of process.**

Whenever documents are required to be filed or served under this part, or notice provided under this part, certified mail shall be used with a return receipt requested. Alternatively, any other system may be used that provides proof of the date of receipt of the documents by the addressee. If this regulation is not complied with, and if a party alleges that it failed

(a) Whenever an appeal is not filed within the time specified in these or related regulations, the potential appellant shall be deemed to have consented to the proposed action and to have waived all rights of appeal.

(b) Whenever a party has failed to file a response or other submission within the time required in these regulations, or by order of an appropriate HHS responsible official, the party shall be deemed to have waived the right to file such response or submission.

(c) A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.

(d) The time to file an appeal, response, or other submission may be waived in accordance with § 1303.8 of this part.

### **§ 1303.8 Waiver of requirements.**

(a) Any procedural requirements required by these regulations may be waived by the responsible HHS official or such waiver requests may be granted by the Departmental Appeals Board in those cases where the Board has jurisdiction. Requests for waivers must be in writing and based on good cause.

(b) Approvals of waivers must be in writing and signed by the responsible HHS official or by the Departmental Appeals Board when it has jurisdiction.

(c) “Good cause” consists of the following:

- (1) Litigation dates cannot be changed;
- (2) Personal emergencies pertaining to the health of a person involved in and essential to the proceeding or to a member of that person’s immediate family, spouse, parents, or siblings;
- (3) The complexity of the case is such that preparation of the necessary documents cannot reasonably be expected to be completed within the standard time frames;
- (4) Other matters beyond the control of the party requesting the waiver, such as strikes and natural disasters.

(d) Under no circumstances may “good cause” consist of a failure to meet a deadline due to the oversight of either a party or its representative.

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### Test Questions:

#### **Select the correct "True" or "False" option.**

5. ***A party fails to comply with the requisite deadlines or time frames if it exceeds them by any amount.*** (1303.7)

True  False

6. ***Requests for waivers must be in writing and based on the requesting agency needing more time.*** (1303.8)

True  False

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Last Name \_\_\_\_\_

First \_\_\_\_\_ Initial \_\_\_\_

Location \_\_\_\_\_