

§ 1303.16

45 CFR Ch. XIII (10–1–05 Edition)

(d) Decisions to deny refunding shall be in writing, signed by the responsible HHS official, dated, and sent in compliance with §1303.5 of this part or by telegram, or by any other mode establishing the date sent and received by the addressee, or the date it was determined delivery could not be made, or the date delivery was refused. A Notice of Decision shall contain:

(1) The legal basis for the denial of refunding under paragraph (c) of this section, the factual findings on which the denial of refunding is based or references to specific findings in another document that form the basis for the denial of refunding (such as reference to item numbers in an on-site review report or instrument), and citation to any statutory provisions, regulations or policy issuances on which ACF is relying for its determination.

(2) The identity of the delegate agency, if the activities of that delegate agency are the basis, in whole or in part, for the proposed denial of refunding; and

(3) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, the delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(4) A statement that failure of the notice of denial of refunding to meet the requirements of this paragraph may result in the dismissal of the denial of refunding action without prejudice, or the remand of that action for the purpose of reissuing it with the necessary corrections.

(e) The appeal may be made only by the Board of Directors of the grantee or by an official acting on behalf of such Board.

(f) If the responsible HHS official has initiated denial of refunding proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate

agency, person, agency or organization that wishes to participate in the hearing may request permission to do so from the Departmental Appeals Board. Any request for participation, including a request by a delegate agency, must be filed within 30 days of the grantee's appeal.

(g) Paragraphs (i), (j), and (k) of 45 CFR 1303.14 shall apply to appeals of denials of refunding.

(h) The Departmental Appeals Board sanctions with respect to a grantee's appeal of denial of refunding are as follows:

(1) If in the judgment of the Departmental Appeals Board a grantee has failed to substantially comply with the provisions of the preceding paragraphs of this section, its appeal must be dismissed with prejudice.

(2) If the Departmental Appeals Board concludes that the grantee's failure to comply is not substantial, but is confined to one or a few specific instances, it shall bar the submittal of an omitted document, or preclude the raising of an argument or objection not timely raised in the appeal, or deny a request for a document or other "discovery" request not timely made.

(3) The sanctions set forth in paragraphs (h)(1) and (2) of this section shall not apply if the Departmental Appeals Board determines that a grantee has shown good cause for its failure to comply with the relevant requirements. Delays in obtaining representation shall not constitute good cause. Matters within the control of its agents and attorneys shall be deemed to be within the control of the grantee.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

**§ 1303.16 Conduct of hearing.**

(a) The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown otherwise determines.

(b) Communications outside the record are prohibited as provided by 45 CFR 16.17.

(c) Both ACYF and the grantee are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (g) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) Prepared written direct testimony will be used in appeals under this part in lieu of oral direct testimony. When the parties submit prepared written direct testimony, witnesses must be available at the hearing for cross-examination and redirect examination. If a party can show substantial hardship in using prepared written direct testimony, the Departmental Appeals Board may exempt it from the requirement. However, such hardship must be more than difficulty in doing so, and it must be shown with respect to each witness.

(e) In addition to ACYF, the grantee, and any delegate agencies which have a right to appear, the presiding officer may permit the participation in the proceedings of such persons or organizations as deemed necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(f) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the Departmental Appeals Board. This application must be made within 30 days of the grantee's appeal in the case of the appeal of termination or denial of refunding, and as soon as possible after the notice of suspension has been received by the grantee. It must state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(g) The presiding officer shall permit or deny such participation and shall

give notice of his or her decision to the applicant, the grantee, and ACYF, and, in the case of denial, a brief statement of the reasons therefor. Even if previously denied, the presiding officer may subsequently permit such participation if, in his or her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(h) The Departmental Appeals Board will send the responsible HHS official, the grantee and any other party a notice which states the time, place, nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice will also identify with reasonable specificity and ACYF requirements which the grantee is alleged to have violated. The notice will be served and filed not later than ten work days prior to the hearing.

[57 FR 59264, Dec. 14, 1992, as amended at 65 FR 4769, Feb. 1, 2000]

**§ 1303.17 Time for hearing and decision.**

(a) Any hearing on an appeal by a grantee from a notice of suspension, termination, or denial of refunding must be commenced no later than 120 days from the date the grantee's appeal is received by the Departmental Appeals Board. The final decision in an appeal whether or not there is a hearing must be rendered not later than 60 days after the closing of the record, i.e., 60 days after the Board receives the final authorized submission in the case.

(b) All hearings will be conducted expeditiously and without undue delay or postponement.

(c) The time periods established in paragraph(a) of this section may be extended if:

(1) The parties jointly request a stay to engage in settlement negotiations,

(2) Either party requests summary disposition; or

(3) The Departmental Appeals Board determines that the Board is unable to hold a hearing or render its decision within the specified time period for