

(1) If a Tribe does not claim reasonable cause for failing to meet a requirement; or

(2) If we found that a Tribe did not have reasonable cause.

(b) A Tribe that does not claim reasonable cause will have 60 days from receipt of the notice described in § 286.220(a) to submit its corrective compliance plan to us.

(c) A Tribe that does not demonstrate reasonable cause will have 60 days from receipt of the second notice described in § 286.220(d) to submit its corrective compliance plan to us.

(d) In its corrective compliance plan the Tribe must outline:

(1) Why it failed to meet the requirements;

(2) How it will correct the violation in a timely manner; and

(3) What actions, outcomes and time line it will use to ensure future compliance.

(e) During the 60-day period beginning with the date we receive the corrective compliance plan, we may, if necessary, consult with the Tribe on modifications to the plan.

(f) A corrective compliance plan is deemed to be accepted if we take no action to accept or reject the plan during the 60-day period that begins when the plan is received.

(g) Once a corrective compliance plan is accepted or deemed accepted, we may request reports from the Tribe or take other actions to confirm that the Tribe is carrying out the corrective actions specified in the plan.

(1) We will not impose a penalty against a Tribe with respect to any violation covered by that plan if the Tribe corrects the violation within the time frame agreed to in the plan.

(2) We must assess some or all of the penalty if the Tribe fails to correct the violation pursuant to its corrective compliance plan.

§ 286.235 What penalties cannot be excused?

(a) The penalties that cannot be excused are:

(1) The penalty for failure to repay a Federal loan issued under section 406.

(2) The penalty for failure to replace any reduction in the TFAG resulting

from other penalties that have been imposed.

(b) [Reserved]

§ 286.240 How can a Tribe appeal our decision to take a penalty?

(a) We will formally notify the Tribe of a potential reduction to the Tribe's TFAG within five days after we determine that a Tribe is subject to a penalty and inform the Tribe of its right to appeal to the Departmental Appeals Board (the Board) established in the Department of Health and Human Services. Such notification will include the factual and legal basis for taking the penalty in sufficient detail for the Tribe to be able to respond in an appeal.

(b) Within 60 days of the date it receives notice of the penalty, the Tribe may file an appeal of the action, in whole or in part, to the Board.

(c) The Tribe must include all briefs and supporting documentation when it files its appeal. A copy of the appeal and any supplemental filings must be sent to the Office of General Counsel, Children, Families and Aging Division, Room 411-D, 200 Independence Avenue, SW, Washington, DC 20201.

(d) ACF must file its reply brief and supporting documentation within 45 days after receipt of the Tribe's submission under paragraph (c) of this section.

(e) The Tribe's appeal to the Board must follow the provisions of this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title to the extent they are consistent with this section.

(f) The Board will consider an appeal filed by a Tribe on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. Such information may include a hearing if the Board determines that it is necessary. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues.

(g) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(h) A Tribe may obtain judicial review of a final decision by the Board by