

§91.49

the recipient that has discriminated, HHS may require both recipients to take remedial action.

§91.49 Alternate funds disbursement procedure.

(a) When HHS withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Secretary will require any alternate recipient to demonstrate:

- (1) The ability to comply with these regulations; and
- (2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§91.50 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and HHS has made no finding with regard to the complaint; or

(2) HHS issues any finding in favor of the recipient.

(b) If HHS fails to make a finding within 180 days or issues a finding in favor of the recipient, HHS shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;

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(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

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