

NIH GUIDE

for GRANTS and CONTRACTS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Vol. 3, No. 18, November 13, 1974

GRANT APPEALS PROCEDURE

PROCEDURE NOTICE

1. PURPOSE This document establishes NIH procedure for the resolution of post-award controversy between grantee institutions and the NIH in order to preclude submission of cases to the DHEW Grant Appeals Board before NIH has had an opportunity to review decisions of its own officials and to settle disputes with grantees.
2. APPLICABILITY This policy is applicable to all NIH research and training project, program project and center grants.
3. REFERENCES
 - a. Code of Federal Regulations, Title 42, Part 50, Subpart D, Public Health Service Grant Appeals Procedure.
 - b. PHS Grants Administration Manual Chapter 1-520.
4. BACKGROUND The Secretary of Health, Education, and Welfare has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings upon post-award disputes which may arise in the administration of DHEW grants. Paragraph 16.5 (b) (2) of the Charter which establishes such Board authorizes DHEW agencies to establish informal appeals procedures, which must be exhausted before a formal appeal to the Departmental Board will be allowed. The PHS procedure is published as regulation in the Federal Register as 42 CFR, Part 50, Subpart D.
5. POLICY The NIH grant appeals procedure must be fully utilized toward resolution of post-award disputes between grantee institutions and NIH components. When such disputes are not resolved to the grantee institution's satisfaction under this procedure, the grantee then may, within specified time limits, appeal to the Departmental Grant Appeals Board as provided for in 45 CFR Part 16.
6. SCOPE
 - a. Post-award adverse determinations made in writing by the NIH which may be appealed through the NIH appeals procedure are as follows:
 - (1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms of such assistance, or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

The GUIDE is published at irregular intervals to provide policy, program, and administrative information to individuals and organizations who need to be kept informed of requirements and changes in grants and contracts activities administered by the National Institutes of Health.

- (2) Determination that an expenditure not allowable under the grant has been charged to the grant.
- (3) Determination that the grantee has failed to discharge its obligation to account for grant funds.
- (4) Disapproval of a grantee's written request for permission to incur an expenditure during the term of the grant.

[For purposes of this section, the failure of the appropriate NIH component to respond to a grantee's request within 30 days after the postmark date of the grantee's request shall be deemed notification of an adverse determination.]

- (5) Determination that a grant is void.
- b. Adverse determinations may not be submitted for review to the NIH unless the appropriate NIH official has:
 - (1) notified the grantee in writing of such determination, or
 - (2) as in 6 a.(4) above, failed to respond to a grantee's written request within 30 days.
 - c. In its written notification the NIH must set forth the reasons for the determination in sufficient detail to enable the grantee to respond. The adverse determination shall contain the following statement:

"This determination may be appealed by making a written request for review. The request must be postmarked no later than 30 days after the postmark date of this notice. The request should be addressed to the Associate Director for Extramural Research and Training, NIH, Bethesda, Maryland 20014, and must clearly identify the question in dispute, contain a full statement of your position in respect to the question and the pertinent facts and reasons in support of such position. A copy of this determination must be attached to your submission."

- d. Determinations on establishment of indirect cost and research patient hospital care rates are made by the DHEW and may not be appealed to the NIH.

7. REVIEW COMMITTEE

- a. The Associate Director for Extramural Research and Training (ADERT) shall appoint a standing review committee consisting of him (or his designee) plus two other members representing the Office of the Director for Administration and the Division of Research Grants for terms to be designated at the time of appointment. The ADERT will be chairman.
- b. On a case-by-case basis, not less than two ad hoc members from the Bureaus, Institutes, or Divisions will be named by the ADERT representing appropriate scientific administration and grants management. None of the members of the review committee reviewing any given appeal will be from the NIH component involved in the adverse determination.

8. PROCEDURE (See Flow Chart - Page 5)

- a. A grantee institution seeking a review with respect to an adverse determination described under 6, above, must submit a request in writing for review to the ADERT, NIH, no later than 30 days after the postmark date of the written notification of such determination. The ADERT may grant an extension of time if good cause is shown. Where the adverse determination results from failure of an NIH official to respond to a grantee's request within a reasonable time as specified in section 6 b.(2), the grantee's request for review must be postmarked no later than 90 days after the date the grantee originally requested permission to incur an expenditure.
- b. Although the request for review need not follow any prescribed form, it must contain a full statement of the grantee's position with respect to the disputed matter and the facts and reasons in support of this position. Except for a determination described in 6 a.(4), the grantee will attach to this submission a copy of the notice of adverse determination.
- c. When a request for review of a determination described in 6 a., has been filed, no further action may be taken by the NIH pursuant to the adverse determination until such request has been disposed of, except that the filing of a request for review shall not affect the authority which NIH may have to suspend assistance, withhold or defer payments under the grant during the review procedure.
- d. Upon receipt of such a request, the ADERT or his designee will immediately notify in writing the chief extramural programs officer of the responsible Bureau, Institute, or Division (BID) with a copy of the notification to the BID Director. In the case of appeal of an audit determination, the Director, Division of Contracts and Grants, NIH, will be notified. The grantee will also be informed that his appeal is under review.
- e. The NIH component involved will provide the NIH review committee with copies of all background materials needed to properly review the case.
- f. Both grantee and NIH staff may be invited by the review committee to discuss pertinent issues or to submit such additional information as is deemed necessary.
- g. As soon as practicable following its review, the committee will prepare a response to the grantee for the signature of the chairman. Copies of the response will be sent to the Director and chief extramural programs officer of the BID involved, or in the case of audit determinations to the Director, Division of Contracts and Grants, NIH.
- h. All proceedings shall be adequately documented and retained in NIH files. Such material shall be available to the DHEW Appeals Board in case of a formal appeal.

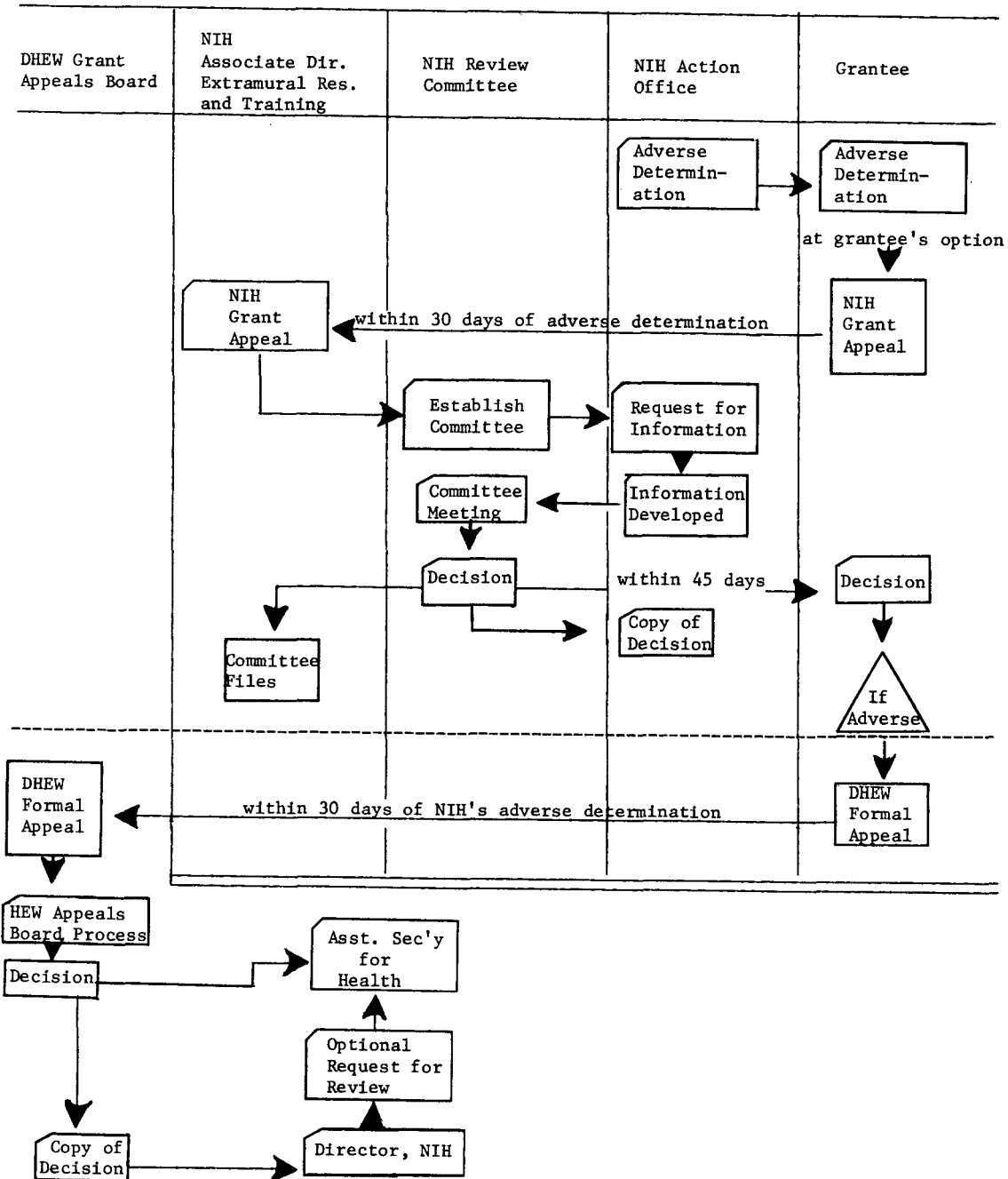
9. DHEW APPEALS PROCEDURE

- a. Part 16 of Title 45 of the Code of Federal Regulations establishes the criteria and procedures for appealing adverse decisions concerning the administration of grant awards made by the Department of Health, Education, and Welfare. The regulation, effective for any determinations made on or after May 21, 1973, was published in the Federal Register dated April 20, 1973, pp. 9906-9910.

- b. Grantees desiring to appeal an adverse decision by the National Institutes of Health may do so by requesting a review in writing. The request for review must be postmarked no later than 30 days after the postmarked date of the adverse decision and be addressed to the Executive Secretary, Grant Appeals Board, 330 Independence Avenue, SW, Washington, D.C. 20201. The request for review must clearly identify the question(s) in dispute and contain a full statement of the grantee's position with respect to such question(s) and the pertinent facts and reasons in support of the appeal.
 - c. The DHEW Grant Appeals Board upon completion of its deliberations will send an initial written decision to the grantee and the Director, DGC, OASH. Copies will be sent to the Director, NIH; the Secretary; and the Assistant Secretary for Health (ASH).
 - d. The Director, NIH, and the grantee may in writing, within the time period specified by the DHEW Grant Appeals Board, request the ASH to review the initial decision. The initial decision becomes final within 25 days unless the Secretary is notified.
 - e. If, as a result of his review, the Assistant Secretary for Health decides to modify or reverse the initial decision of the DHEW Panel, he must notify the Secretary of the basis for his action. The decision will not be transmitted to the grantee until 30 days after the notice is sent by ASH to the Secretary. The decision becomes final only when served on the grantee.
10. EFFECTIVE DATE This policy is effective on date of release.
11. This issuance rescinds NIH Guide Vol. 2, No. 5, p.2, July 30, 1973.

FLOW CHART
NIH GRANT APPEALS PROCEDURE

ATTACHMENT



NATIONAL HEART, BLOOD VESSEL,
LUNG AND BLOOD PROGRAM:
RELATED FEDERALLY SUPPORTED PROGRAMS

ANNOUNCEMENT

The National Heart and Lung Institute wishes to notify the scientific community of the availability of a publication dated May 15, 1974, describing programs supported during Fiscal Year 1973 by NIH Bureaus, Institutes, and Divisions and by other Federal departments and agencies, which are related to the goals and objectives of the National Heart, Blood Vessel, Lung, and Blood Program. The publication also describes information sources available which can assist the scientist or administrator in obtaining information on ongoing research in National Plan problem areas.

Copies of this volume may be obtained by requesting DHEW Publication No. (NIH) 75-686 and 75-687 from the Office of Program Planning and Evaluation, National Heart and Lung Institute, NIH, Building 31, Room 5A-31, Bethesda, Maryland 20014.

JUSTIFICATION OF ANIMAL CARE COSTS
ON NIH GRANTS AND CONTRACTS

ANNOUNCEMENT

It is NIH policy that charges for the acquisition, care, and use of experimental animals are allowable costs in connection with its research grants and contracts. Animal costs are subject to review and audit as are any other costs in grant and contract budgets. Animal costs frequently are in the form of fees paid to a central institutional facility for animals, animal care, and other services. It is the NIH position to accept the fee schedule of an institutional animal facility provided that these fees are based on acceptable cost accounting procedures and do not exceed actual costs.

One such acceptable cost accounting method is presented in the "Cost Analysis and Rate Setting Manual for Animal Resource Facilities." Copies of this manual are available upon request from the Animal Resources Branch, Division of Research Resources, NIH, Bethesda, MD 20014.

It is recommended that in justification of animal fees on grant and contract budgets that the relevant unit fee be stated together with the number of units required for the project. The method by which the unit fees were determined should also be stated. For example:

Animal Costs 20 rats maintained for 250 days at .16/day = \$800
The .16/day fee was determined according to methods
presented in "Cost Analysis and Rate Setting Manual for
Animal Resource Facilities."

Grantees and contractors must realize that as a result of scientific review or program determinations, the scope of the project may be reduced, thereby reducing the animal requirement. However, the fee rate should not be reduced if it has been appropriately determined. NIH does reserve the right of special review of any fees which appear to be unreasonable.

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