Proposed Rules

Federal Register
Vol. 75, No. 183
Wednesday, September 22, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1307

RIN 0970–AC44

Head Start Program

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This regulation proposes to amend Head Start Program regulations to implement statutory provisions of the Improving Head Start for School Readiness Act of 2007 for establishing a system of designation renewal to determine if Head Start and Early Head Start agencies are delivering high-quality and comprehensive Head Start and Early Head Start programs that meet the educational, health, nutritional, and social needs of the children and families they serve, and meet program and financial management requirements and standards.

DATES: In order to be considered, comments on this proposed rule must be received on or before December 21, 2010.

ADDRESSES: Interested persons are invited to submit comments to the Office of Head Start, 1250 Maryland Avenue, SW., Washington, DC 20024, Attention: Colleen Rathgeb or electronically via the Internet at *http://www.regulations.gov.* If you submit a comment, please include your name and address, identify the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this Notice of Proposed Rulemaking may be downloaded from *http://www.regulations.gov.* Comments will be available for public inspection at the Department's offices in Portals, 8th Floor, 1250 Maryland Avenue, SW., Washington, DC 20024, Monday through Friday between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, 202–205–7378 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is published under the authority granted to the Secretary of Health and Human Services by sections 641, 645A(b)(12), and 644(c) of the Head Start Act (the Act) (42 U.S.C. 9801 *et seq.*), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134).

II. Comment Procedures

Section 641(c)(5) of the Act requires the Secretary of HHS to publish a notice in the **Federal Register** describing a proposed system for designation renewal, including a proposal for the transition to such system. The Act provides for a period of at least 90 days for public comment.

In making any modifications to this notice of proposed rulemaking, we will not consider comments received beyond the 90-day comment period. To make sure your comments are addressed fully, we suggest the following:

- Be specific;
- Address only issues raised by the proposed rule, not the changes to the law itself;
- Explain reasons for any objections or recommended changes;
- Propose appropriate alternatives; and
- Reference the specific section of the notice of the proposed rule being addressed.

III. Background

The Head Start program is a national program administered by the Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), which promotes school readiness of low-income children by enhancing their cognitive, physical, social, and emotional development through the provision of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive child development services to economically disadvantaged children and families, with a special focus on helping preschoolers develop the skills they need to be successful in school. In FY 1995, the Early Head Start program was established to serve families of economically disadvantaged children from birth to three years of age and pregnant women from such families in recognition of the mounting evidence that the earliest years matter a great deal to children's growth and development.

On February 28, 2005, the United States Government Accountability Office (GAO) issued a report entitled, "Head Start: Comprehensive Approach to Identifying and Addressing Risks Could Help Prevent Grantee Financial Management Weaknesses" (GAO–05–176). The report is available on the GAO Web site at: *http://www.gao.gov/new.items/d05176.pdf.* In that report, GAO found that the Administration for Children and Families (ACF) did not recompete the grants of poorly performing grantees. Instead, ACF gave continuous funding priority to current grantees and as a result, in a number of instances, ACF funded poorly performing grantees until the grantee either relinquished the grant or ACF terminated the grant. GAO stated that, "When grants are allowed to remain with poorly performing grantees, children being served may not be getting the 'head start' they deserve because the grantees continuously fail to meet program and financial management standards."

In their Recommendations for Executive Action, GAO recommended that ACF "take steps to obtain competition for the grant if it has determined that the current recipient of those grant funds fails to meet program, financial management, or other requirements." In its comments on the draft GAO report, ACF expressed

uncertainty about the scope of its authority to implement the GAO recommendation to recompete Head Start grants. In response to the ACF concerns, GAO asked Congress to consider providing ACF with the authority to recompete grants when ACF determines that a current grantee is not meeting Head Start's program or financial management requirements.

On December 12, 2007, the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134) amended the Head Start Act (the Act) to provide HHS with the authority to recompete grants. The Head Start Act, as amended, establishes that Head Start grantees will be awarded grants for a five-year period and only grantees delivering high-quality services will be given another five-year grant non-competitively. Section 641 of the Act requires the Secretary of the HHS to develop and implement a system for designation renewal (*e.g.,* Designation Renewal System (DRS)) to determine if a Head Start agency is delivering a high-quality and comprehensive Head Start program that meets the educational, health, nutritional, and social needs of the children and families it serves.

This proposed rule responds to those requirements. We also propose to extend these requirements to Early Head Start programs pursuant to the authority of section 645A(b)(12) of the Act. Early Head Start programs provide family-centered services for low-income families—pregnant women, infants and toddlers. These are the youngest children and most vulnerable families we serve. We believe that Early Head Start programs must be held to the same high standards as all other Head Start programs in regard to designation and redesignation in order to ensure that they provide high-quality services to promote the development of the youngest children in the community and enable parents to move towards self sufficiency.

Section 641(c)(1) of the Act requires that the DRS be shaped to determine whether a grantee is providing high-quality services and meets the program and financial management requirements and standards described in section 641A(a)(1) of the Act, based on:

(A) Annual budget and fiscal management data;

(B) Program reviews conducted under section 641A(c);

(C) Annual audits required under section 647;

(D) Classroom quality as measured under section 641A(c)(2)(F); and

(E) Program Information Reports.

In the Conference Report that accompanied the Improving Head Start for School Readiness Act of 2007, the Conference Committee stated, "This system is meant to facilitate the designation of programs that are in good standing and are providing a high-quality comprehensive early childhood program, for a period of 5 years. The Conferees believe that other programs not providing a high-quality comprehensive early childhood program should not receive a designation renewal without first entering into an open competition." H.R. Conf. Rep. No. 110–439 at 111 (2007), *as reprinted in* 2007 U.S.C.C.A.N. 442, 462.

The Conference Committee also noted that they did not intend the designation renewal system to result in competition for all Head Start grantees because such a process could undermine overall program performance. As stated in the Conference Report: "Furthermore, the Conferees believe that the policy to limit open competition to under-performing Head Start agencies will improve overall program performance. The Conferees strongly believe the majority of Head Start programs are delivering high-quality services and therefore do not intend for this new designation system to result in competition for designation for the majority of Head Start programs. Furthermore, competing high-quality programs could undermine overall program quality. The Conferees believe that in most instances, stability and continuity within Head Start promotes better quality and greater efficiency." Id.

Section 641(c) of the Act required the Secretary of HHS to convene an expert panel (e.g., "the Committee") to inform the development of a DRS and "make recommendations to the Secretary on the development of a transparent, reliable, and valid system for designation renewal." The seven members of the Committee were appointed by the Secretary per the requirements in section 641(c)(3) of the Act. The Committee convened three two-day meetings in March, June, and October 2008 and issued a report in December 2008. The report, "A System of Designation Renewal of Head Start Grantees," is available at the following Web site: *http://eclkc.ohs.acf.hhs.gov/hslc/Program%20Design%20and%20Management/Head%20Start%20Requirements/Renewal%20of%20Head%20Start%20Grantees.*

In its Report the Committee's first and overarching recommendation was for ACF to "develop a designation renewal system that is—

- Reliable and valid in terms of the criteria and indicators used, and is transparent to families, programs and the public;
- Simple and easily understood by all stakeholders; and
- Integrated into ongoing systems for program improvement in such a way as to add value."

ACF strongly agrees with this recommendation and used reliability and validity, simplicity and understandability, and connections to program improvement systems as the guiding principles in designing the proposed system.

The Committee also recommended that the DRS be based on "Automatic Indicators" and eventually also include "Key Quality Indicators." The term "Automatic Indicators" as defined in the report means events whose occurrence would require a grantee to compete for renewal automatically. The term "Key Quality Indicators" refers to poor performance in multiple areas that would require a grantee to compete for renewal. ACF agrees with the recommendations of the Committee, and we propose a set of conditions that would trigger competition.

In addition, ACF is proposing to ensure that a minimum of 25 percent of all grantees reviewed during each one-year cycle will be required to recompete. If the conditions outlined in the rule do not identify a minimum of 25 percent of grantees, then other indicators of low performance will be used to identify other poor performers that will be required to recompete. ACF believes that the expectation embodied in this provision is critical to ensuring that the proposed rule realizes its potential to improve child outcomes.

We acknowledge the Committee's expectation that "no more than approximately 15 to 20 percent of all grantees should be expected to compete for another five-year grant." However, the Administration is committed to funding only high-performing grantees and conducting effective and rigorous competitions. Recent research on Head Start programs has illustrated the need for improvement and for more rigorous standards across Head Start programs. We understand that neither the Committee nor the Congress intended for all grantees to recompete for grants as required by most Federal grant programs. However, given the importance of the provision of quality services for Head Start children and families, we believe that setting a minimum 25 percent standard for recompetition is appropriate to ensure the best services for Head Start children.

The Administration is deeply committed to the mission of Head Start—to helping our nation's most vulnerable children get a head start on success in school and in life—and as

such is deeply committed to improving quality across all Head Start programs. Participation in high-quality early childhood care and education programs can affect crucial child outcomes dramatically, but participation in low-quality programs has little or no impact. Recent research suggests that quality in Head Start programs varies considerably, and suggests that there is significant room for improvement in Head Start programs. For example, "FACES Findings: New Research on Head Start Outcomes and Program Quality" reports that while average Head Start classroom quality is good, there was substantial variation.

Competition for grants is an important tool for encouraging excellence, establishing accountability for poor performance, and opening up Head Start to new energetic organizations that may have great capacity to run high-quality programs. Unless specified in the regulations for grantees that have been terminated, current grantees will be eligible to compete again for their current grants, but other potential grantees will be able to do so as well. Finally, subjecting a fixed percentage of grants to recompetition reduces the risk of unintended consequences that could jeopardize a meaningful assessment of grantee performance.

ACF agrees with the Committee that Head Start and Early Head Start grantees should have a clear understanding of what criteria will be used as "triggers" in making the decision to recompete a grant and so proposes the concept of conditions/criteria that will result in recompetition of a grant. The proposed conditions/criteria draw substantively from both Automatic and Key Quality Indicators and allow for a more simple and understandable system. ACF also believes that the proposed data sources that are utilized to support the recompetition decisions would be reliable, valid, and transparent as recommended by the Committee.

The Committee made specific recommendations on determination criteria that would automatically require a grantee to compete for renewal, including: Suspension; bankruptcy or debarment; revocation by a State or local government of a license to operate a child care program; and a significantly higher number of deficiencies in OHS monitoring than the average grantee has. In the discussion of determination criteria, the Committee discussed program performance indicators in the area of Financial Management, including: An audit finding of going concern risk (going concern is proposed to be defined as an organization that operates without the threat of liquidation for the foreseeable future, a period of at least 12 months); and a designation of fiscal high risk. The Committee discussed the use of Program Management determination criteria, including: Governance; internal controls; eligibility, recruitment, selection, enrollment, attendance (ERSEA); self-assessment and ongoing monitoring; human resources; and safety. The Committee discussed determination criteria in the area of Education, including: Curriculum; assessment; and structured learning environment. The Committee recommended incorporating a practical classroom observation tool and effective measures of child outcomes and of individualization when ACF is satisfied it has the appropriate tools and measures. The Committee recommended determination criteria in the area of Comprehensive Services, including: Immunization; screening and follow-up; meeting the requirement that at least 10 percent of actual enrollment include children with disabilities that have been determined eligible for special services under Individuals with Disabilities Education Act (IDEA) by the agency providing IDEA services in their community; and a developmental indicator on parent involvement.

As discussed in the following Section by Section Discussion of the Regulatory Provisions, we are proposing to adopt the majority of the Committee's recommendations in whole or with minor modifications. Concurrent with publishing this proposed rule, ACF will provide a report to Congress that provides a detailed description of the proposed new system, including a clear rationale for any differences between the proposed system and the recommendations of the Committee. Until the new system is developed and implemented by the Secretary of HHS, section 641(a)(2) of the Act states that the interim policy after the enactment of Public Law 110–134 is for ACF to award grants as it has done prior to the 2007 Head Start reauthorization.

Section by Section Discussion of Regulatory Provisions

To address Head Start designation renewal, we propose to amend 45 CFR Chapter XIII by adding a new Part 1307, Policies and Procedures for Designation Renewal of Head Start and Early Head Start Grantees.

Section 1307.1—Purpose and Scope

We propose to add section 1307.1 to set forth the purpose and scope of Part 1307. The purpose of this Part is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The designation renewal system is established in this Part to determine if Head Start and Early Head Start agencies meet the educational, health, nutritional, and social needs of the children and families they serve and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start grantee to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the designation renewal system established in this Part, and is subject instead to the requirements of Part 1302, Policies and Procedures for Selection, Initial Funding and Refunding of Head Start Grantees, and for Selection of Replacement Grantees.

Section 1307.2—Definitions

Section 1307.2 proposes the following definitions as applicable to this part: ACF, Act, Agency, designated ACF official, Early Head Start Agency, going concern, Head Start Agency, material weakness, and transition period.

ACF is proposed to be defined as the Administration for Children and Families in the Department of Health and Human Services.

Act is proposed to be defined as the Head Start Act, 45 U.S.C. 9831 *et seq.*

Agency is proposed to be defined as a public or private non-profit or for-profit entity designated by ACF to operate a Head Start or Early Head Start program.

Designated ACF official is proposed to be defined as the Official authorized under Department of Health and Human Services delegations authority to perform actions required or authorized by statute, regulation, delegation, or order of a superior official.

Early Head Start Agency is proposed to be defined as a public or private non-profit or for-profit entity designated by ACF to operate an Early Head Start program to serve pregnant women and children from birth to age three, pursuant to 645A(e) of the Head Start Act.

Going concern is proposed to be defined as an organization that operates

without the threat of liquidation for the foreseeable future, a period of at least 12 months. One Head Start agency, for example, had a "going concern" audit finding because it suffered recurring losses from operations resulting in a net deficit in working capital, which raised substantial doubt about its ability to continue as a viable operation.

Head Start Agency is proposed to be defined as a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start program to serve children age three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act.

Material weakness means a weakness, or a combination of weaknesses, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the grantee's annual or interim financial statements will not be prevented or detected on a timely basis. One Head Start agency, for example, had an audit finding resulting from its failure to pay the payroll taxes for personnel as required by the Internal Revenue Code. This resulted in the agency being subject to Internal Revenue Service penalties.

ACF believes that an agency that is determined to have one or more material weaknesses or to be unable to ensure that it can continue as a going concern should result in the grantee being required to recompete for renewal. If a grantee is not a going concern, it will not be able to provide the Head Start services it is funded to provide because it will have ceased operations and be in the process of being liquidated. The definition of "material weakness" ACF is proposing to use is based on the definition of the term in the Securities and Exchange Commission regulation at 17 CFR 210.1–02(a)(4).

ACF is proposing to adopt the definitions for *going concern* and *material weakness* because they reflect the way the two terms are used in audits of Head Start grantees as required by section 647 of the Head Start Act. We invite comments on these definitions and request that along with any issues raised, commenters suggest specific alternative definitions.

The final definition proposed is *transition period,* which ACF proposes to mean the three-year time period after the effective date of the final rule on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions or criteria under section 1307.3 that would require recompetition or if the grantee will receive its first five-year grant non-competitively.

Section 1307.3—Basis for Determining Whether a Head Start Agency Will Be Subject to an Open Competition

In section 1307.3, ACF proposes to establish a designation renewal system in which a minimum of 25 percent of all Head Start grantees (including both Head Start and Early Head Start grantees) reviewed in the same year will be required to recompete based on seven specified performance conditions. As described further below, the rule sets forth how other lower performing grantees will be selected for recompetition if the seven conditions specified in the rule—such as having a deficiency or license revocation—do not result in at least 25 percent of grantees being identified for recompetition.

Under paragraph (a), a minimum of 25 percent of all Head Start grantees (including both Head Start and Early Head Start grantees) reviewed in the same year will be required to compete for their next five years of funding.

Under paragraph (b), ACF proposes seven conditions in three critical areas of Head Start program administration that would trigger recompetition: quality, licensing and operation, and fiscal and internal controls. Paragraphs (b)(1), (2), and (3) address the quality of Head Start programs by proposing that an agency is required to recompete if it has one or more deficiencies that were determined during a single review of the Head Start agency; fails to establish and use goals for improving school-readiness of children in their program; or has low performance on one or more domains of the Classroom Assessment Scoring System Pre-K (CLASS: Pre-K) in the two most recent CLASS: Pre-K observations. Paragraphs (b)(4) and (b)(5) address the area of licensing and operation by proposing that an agency is required to recompete if it experiences a revocation of its license to operate by a State or local licensing agency; or a suspension of its Head Start grant by ACF. Paragraphs (b)(6) and (b)(7) address the area of fiscal and internal controls by proposing that an agency is required to recompete if it is debarred by any Federal or State agency from receiving Federal or State funds or is disqualified from The Child and Adult Care Food Program (CACFP); or is determined to have one or more material weaknesses or determined to be unable to ensure that it can continue as a going concern.

The conditions provided under paragraph (b) may result in the designation of at least 25 percent of grantees for recompetition as required under proposed paragraph (a). However, given the uncertainty regarding the impact of this new system and the critical need to ensure high-quality services for Head Start children, if a minimum of 25 percent of all grantees reviewed in the same year are not required to compete for their next five years of funding based on the conditions described in proposed paragraphs (b)(1)–(7), then objective criteria established by the Secretary would identify additional low performing grantees that will be required to recompete such that the total number of grantees required to recompete meets the 25 percent requirement. We are requesting public comments on several possible criteria to use to strengthen the test for redesignation of poorly performing Head Start grantees. We are considering two primary structures for defining the additional criteria to be met by grantees if needed to satisfy the 25 percent standard and seek public comments on the most effective approach to ensure high-quality performance by all grantees. We also are considering use of a combination of the two approaches outlined below.

The first approach would be based on a system that would assign values to non-compliance findings from reviews under section 641A(c)(A), (C), and (D) of the Act, with higher values assigned to more problematic non-compliance findings. This would result in a system in which a higher score indicated that the grantee had demonstrated a pattern of weaker performance. Each grantee then would be ranked among all the other grantees reviewed in that year. Grantees that received the highest scores would be identified for recompetition as a result of their pattern of poor performance compared to all other grantees reviewed during the same time period. We are seeking public comments about the general merits of such a system, and specifically on the relative weighting of findings, whether some non-compliances should be weighted more heavily than others, and whether the size of the grantee should be a factor taken into consideration in the ranking system.

The second approach we are considering would introduce the use of evidence-based rating instruments into the Head Start monitoring review system. Such rating instruments include: the Early Childhood Environment Rating Scale, the Infant Toddler Environment Rating Scale, and the Family Child Care Environment Rating Scale. Low scores determined using any of these instruments would result in recompetition. Use of these

instruments could provide an increased ability to distinguish the level of quality of services being provided in Head Start and Early Head Start classrooms and family child care homes with evidence-based measures. We are seeking public comments about this structure in general, as well as the three particular rating instruments mentioned above and any alternative tools that interested parties wish to identify in their comments. We also invite public comment on the appropriate scoring level for each instrument that would indicate poorer than acceptable performance as well as the most efficient mechanism for incorporating these rating instruments into the Head Start review process.

The proposed regulation describes the system whereby a Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever ACF determines that one of the specified conditions/criteria under section 1307.3 are met during the relevant time periods described in section 1307.7. Of note, ACF proposes two exceptions related to the time periods under which data will be considered for the conditions described in section 1307.3(b)(2) and (3), as described below and in section 1307.7.

ACF is considering publication of the various data underlying decisions to recompete. Making such information public would provide a valuable service to parents and other community members concerned about the quality of Head Start and Early Head Start, and also would provide a valuable incentive for improvement among Head Start and Early Head Start grantees.

It should be noted that this proposed competition process differs from the current competition process that is used to select a new Head Start or Early Head Start grantee to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily. The replacement grantee process is not part of the DRS established in this Part, and is subject instead to the requirements of Part 1302, Policies and Procedures for Selection, Initial Funding and Refunding of Head Start Grantees, and for Selection of Replacement Grantees.

ACF will begin implementing the DRS within 12 months of the publication of the final rule. Consistent with section 641(c)(9) of the Act, ACF will convert all of the current continuous grants into five-year grants within a three-year transition period after the final rule is published. Per section 641(c)(9)(C) of the Act, ACF is required to establish and implement a schedule for reviewing each Head Start agency. We propose that the designation review will be scheduled to occur during the year following the year that the grantee has its triennial review. In order to initiate the designation review process, each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF immediately after its review under section 641A(c)(1)(A); the request process is explained further in section 1307.7(a). Under this plan, one-third of grantees will be reviewed in each of the first three years after the final rule is published in order for ACF to determine if they meet any of the conditions/criteria under section 1307.3 that would require recompetition or if they will receive the first five-year grant non-competitively. (Section 1307.7 addresses timing and notice of designation decisions.)

After the three-year transition period is finished, all existing Head Start and Early Head Start grantees will be subject to a five-year grant period, as described further in section 1307.7. Grantees for which none of the conditions/criteria in proposed section 1307.3 are met will not be required to recompete and will be awarded another five-year grant; grantees for which one or more of the conditions/criteria in proposed section 1307.3 are met will be required to recompete.

During the DRS review, ACF proposes to examine relevant records about the grantee's performance since June 12, 2009 consistent with section 641(c)(9)(B) of the Act, which specifies that Head Start agencies are not subject to the DRS requirements prior to 18 months after the enactment of the 2007 reauthorization of the Head Start Act. Therefore, no data prior to June 12, 2009 will be considered for the conditions listed in section 1307.3(b)(1), (b)(2), or (b)(4)–(b)(7) or the criteria in paragraph (c); for the condition listed in section 1307.3(b)(3), ACF proposes that no data will be considered until after the effective date of this Part and then only in reviews under section 1307.7(c) beginning in the third year of the three-year transition period.

The first three conditions ACF proposes to use to determine designation renewal related to program quality are described in section 1307.3(b)(1)–(3). We are proposing several conditions that reflect the Committee's recommendations that established conditions should be simple and easily understandable and based on data that is reliable, valid and transparent: (b)(1) one or more deficiencies that were determined during a single review conducted by ACF under section 641A(c)(1)(A), (C), or (D) of the Act; (b)(2) lack of establishment and use of goals for improving school-readiness of children in their program as required by section 641A(g)(2) of the Act; and (b)(3) low performance on the relevant number of domains depending on the time period in which the DRS review occurs of the Classroom Assessment Scoring System Pre-K (CLASS: Pre-K) in the two most recent CLASS: Pre-K observations.

Paragraph (b)(1) as proposed cites deficiency findings through any review conducted under section 641A(c)(1)(A), (C), or (D) of the Act—full triennial reviews, follow-up reviews, or other reviews, including unannounced site inspections of Head Start centers, as appropriate. "Deficiency" is defined in section 637(2) of the Act as: (1) A systemic or substantial material failure of an agency in an area of performance that the Secretary determines involves a threat to the health, safety, or civil rights of children or staff; a denial to parents of the exercise of their full roles and responsibilities related to program operations; a failure to comply with standards related to early childhood development and health services, family and community partnerships, or program design and management; the misuse of funds received under the Act; loss of legal status (as determined by the Secretary) or financial viability, loss of permits, debarment from receiving Federal grants or contracts, or the improper use of Federal funds; or failure to meet any other Federal or State requirement that the agency has shown an unwillingness or inability to correct, after notice from the Secretary, within the period specified; (2) systemic or material failure of the governing body of an agency to fully exercise its legal and fiduciary responsibilities; or (3) an unresolved area of non-compliance.

A grantee that has been determined by ACF to have one or more deficiencies in a single review has demonstrated poor performance that should require the grantee to recompete for renewal. ACF believes that Head Start programs determined to have a failure of this kind are considered appropriately to be failing to provide children with a high-quality and comprehensive Head Start program. Failure to correct a deficiency within the allotted time, which ACF generally establishes as 30 to 45 days for health and safety and financial integrity issues, and 90 to 180 days for most other deficiencies, is grounds to terminate an agency from the Head Start or Early Head Start program under section 641A(e)(1)(C) of the Act. We note that the reviews conducted under section 641A of the Act can result in deficiencies in each of the areas of

education, health, family engagement and management and fiscal systems. Violations of program requirements demonstrating a systemic or substantial lack of program integrity, such as the absence of effective internal financial controls or a failure to properly apply eligibility criteria, will result in deficiency findings. The deficiencies may include findings in the specific "Key Quality Indicators" noted in the Committee's recommendations. Therefore, ACF believes that the proposed deficiency condition indirectly addresses the specific program performance indicators recommended by the Committee.

Proposed paragraph (b)(2) is consistent with the Committee's recommendation regarding the importance of Head Start agencies assessing their own performance in relation to achieving agency-determined school-readiness goals. An agency would be required to recompete if it has been determined by the designated ACF official through a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the period covered by the ACF review under section 1307.7 not to have assessed its own performance regarding school-readiness goals. Of note, we propose that the criteria that will be considered when determining if an agency has assessed successfully its own performance regarding school-readiness goals will differ for the time period prior to the effective date of this Part compared to the time period after the effective date of this Part, as described further in § 1307.7. Specifically, beginning on June 12, 2009, ACF proposes that the criteria to be considered in the recompetition review is whether agencies have established and taken steps to achieve their goals for improving the school readiness of children participating in their program in accordance with the requirements of section 641A(g)(2) of the Act. Beginning with the effective date of this Part, ACF proposes that the criteria to be considered in the recompetition review also will include whether agencies have: analyzed individual child-level assessment data in order to determine each child's status and progress with regard to each of the domains of the Head Start Child Outcomes Framework for Head Start programs and the Child Competencies listed in the Early Head Start Program Performance Measures Framework for Early Head Start programs and to plan how to individualize experiences and instructional approaches to best support each child's progress; and analyzed aggregated child assessment data at least three times per year, except for programs operating less than 90 days, which will be required to do so at least two times within their program period, and program data to support continuous program improvement and to inform professional development, staffing, and other program decisions. We are proposing this two-phase process in order to provide grantees with sufficient time to develop the necessary polices and procedures and train staff on implementation of analysis of child-level data and subsequent action steps to best support each child's progress.

The Head Start Child Outcomes Framework is not developed for, and will not be utilized in, Early Head Start programs. Instead, the Child Competencies listed in the Early Head Start Program Performance Measures Framework will be used as the categories for determining the status of infants and toddlers enrolled in Early Head Start programs.

The third condition proposed under paragraph (b)(3) is the Head Start agency score from the Classroom Assessment Scoring System: Pre-K (CLASS: Pre-K), a system that rates classroom interactions on a seven-point scale with scores of one to two being in the low range; three to five in the mid-range; and six to seven in the high range of quality. Section 641A(c)(2)(F) of the Act requires the Secretary to include as part of the Head Start monitoring review process "a valid and reliable research-based observational instrument, implemented by qualified individuals with demonstrated reliability, that assesses classroom quality, including assessing multiple dimensions of teacher-child interactions that are linked to positive child development and later achievement." Section 641(c)(1)(D) requires that such an instrument be used as part of reviews and for determining whether the grantee meets the program and financial management requirements and standards described in section 641A(a)(1) of the Act. CLASS: Pre-K is "a valid and reliable research-based observational instrument" that meets the statutory requirements. As discussed in the "CLASS Implementation Guide: Measuring and Improving Classroom Interactions in Early Childhood Settings", CLASS has been validated by over ten years of research in educational settings. The authors cite overarching conclusions based on this extensive research noting that "effective teacher-child interactions are a crucial ingredient for children's social and academic development".

It should be noted that the regulations propose an alternative time period to be considered for this condition compared to the other six conditions described in this paragraph. In addition, the regulations propose an alternative standard of performance that would apply only for the cohort of grantees that receive its DRS review during the third year of the three-year transition period.

Specifically, ACF proposes that a Head Start agency will be required to compete for designation renewal if: (1) It scores one, on one or more domains on CLASS: Pre-K, on the two most recent CLASS: Pre-K observations, when the observations are conducted after the effective date of Part 1307, and the findings are identified in a DRS review under Part 1307 conducted after the beginning of the third year of the transition period; and (2) it scores below three, on one or more domains on CLASS: Pre-K, on the two most recent CLASS: Pre-K observations, when the observations are conducted after the effective date of Part 1307, and the findings are identified in a DRS review under Part 1307 conducted after the close of the transition period. Thus, ACF proposes that the results from CLASS: Pre-K observations will not be considered starting on June 12, 2009 as will be the case for the other six conditions described in this paragraph and instead will be considered starting after the effective date of this Part and either at the beginning of the third year of the transition period or after the close of the transition period (depending on when the DRS review is conducted for each grantee). ACF believes that a grantee that has such low scores as described above on the two most recent CLASS: Pre-K observations is not providing children the level of high-quality instruction necessary to adequately prepare for school, and should be required to recompete for renewal. ACF is seeking comment on this standard.

The Administration believes that it is a major step forward to bring the quality of teacher-child interactions to bear on redesignation. The use of CLASS: Pre-K in particular is warranted by the strong research base validating its correlation with student outcomes. Use of CLASS: Pre-K in redesignation should begin as promptly as possible, recognizing also that CLASS: Pre-K has not been used in this way before. ACF will implement the use of CLASS: Pre-K results during the third year of the three-year transition period rather than waiting until the close of the transition period. For this third year of the transition period, we are proposing an alternative standard of performance related to CLASS: Pre-K data that would trigger

recompetition. For only the cohort of agencies reviewed under section 1307.7 during the third year of the three-year transition period, agencies that received a score of one, on one or more domains of CLASS: Pre-K, on the two most recent CLASS: Pre-K observations would be required to compete for designation renewal.

ACF is considering incorporating into the final rule that the condition based on CLASS: Pre-K observations will become effective in the second year of the transition period. In this case, we would use the same criteria stated above for the cohort of grantees reviewed in the third year of the transition period, i.e., if a grantee scores one, on one or more domains on CLASS: Pre-K, on the two most recent CLASS: Pre-K observations. We are interested in receiving public comments on both the implementation timeframe and the use of this alternative standard of performance.

For both time periods, ACF is proposing the following methodology for determining the domain scores for Head Start grantees. The CLASS: Pre-K observations will be incorporated into the reviews under section 641A(c)(1)(A), (C), or (D) of the Act. Except when all children are served by a grantee in a single classroom, ACF will conduct multiple class observations and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves the children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that single class will be the domain scores for the grantee for that CLASS: Pre-K observation. For grantees that serve children in multiple classrooms, ACF will conduct CLASS: Pre-K observations on a subset of the classrooms. After the observation is completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observation in each of the domains covered by the CLASS: Pre-K instrument. ACF will average the scores in each of the domains for all classrooms assessed during an observation to determine the grantee's average score in each domain. ACF has provided and will continue to provide technical assistance to grantees on the CLASS: Pre-K instrument.

We also are considering a number of alternatives related to (b)(3) and the method of calculating the recompetition trigger using the CLASS: Pre-K scores. One option we are considering is to apply different absolute thresholds for each of the three domains based on the national mean scores for those domains. For example, an absolute threshold for the domains of Emotional Support and Classroom Organization could be higher than the threshold for Instructional Support. This approach would reflect research that shows "the domains of Emotional Support and Classroom Organization typically are at the moderate to high level of quality in early childhood classrooms and Instructional Support, however, is typically at a low level of quality" (CLASS Implementation Guide, Hamre et al, December 2009). Research also is exploring whether there are thresholds of quality that must be achieved in each domain in order to influence children's development. For example, research has shown correlations between children's social emotional outcomes in classrooms scoring in the mid to high range of emotional support and for academic outcomes in the lower end of the mid range on Instructional Support (Threshold analysis of association between child care quality and child outcomes for low-income children in pre-kindergarten programs, Burchinal et al, June 2008).

Another alternative we are considering is to base the determination on the grantee's score on each domain relative to the scores of the other grantees reviewed in the same year and then measure a grantee's performance against that threshold. We are interested in receiving public comments on these alternative approaches and whether they provide a more meaningful assessment of grantee performance and/or avoid possible unintended consequences.

The CLASS: Pre-K was developed as part of classroom observation research supported by the National Center for Early Development and Learning and the National Institute for Child Health and Human Development (NICHD) Study of Early Care and Youth Development. It was designed to allow a trained outside observer to provide a reliable assessment of the quality of preschool classrooms. The CLASS: Pre-K also has been used extensively for professional development to improve the quality of classrooms.

The CLASS: Pre-K is based on research and theory suggesting that interactions between children and adults are the primary mechanism for children's development and learning.

The CLASS: Pre-K looks at three dimensions of quality in preschool classrooms: Emotional Support, Classroom Organization, and Instructional Support. In high-quality programs, effective teacher-child interactions measured in the Emotional Support dimension create positive relationships among teachers and children. In Classroom Organization, high-quality interactions lead to well-managed classrooms that provide children with frequent, engaging learning activities and classrooms. High-quality effective interactions as measured in the Instructional Support domain develop children's critical thinking skills, provide ongoing feedback, and facilitate vocabulary development.

The CLASS: Pre-K has been used in a number of large scale studies of early childhood programs, including those mentioned, but also in the Head Start Family and Children Experience Study (FACES) which provides a nationally representative picture of Head Start programs. In general across these studies, average CLASS: Pre-K scores are in the high end of the mid range of quality in Emotional Support and Classroom Organization and lower in the Instructional Support dimension. The Office of Head Start has been pursuing the use of CLASS: Pre-K both as an observational tool and a professional development tool.

The Committee recommended that when ACF was satisfied that it had a valid, reliable, and practical classroom observation tool, we should incorporate it into the designation renewal system. ACF now is satisfied, based on extensive research and testing, that CLASS: Pre-K has proven to be a valid, reliable, and practical classroom observation tool. ACF believes that a low score on CLASS is a reliable and valid indicator of poor performance in preparing Head Start children for school, the primary statutory purpose of Head Start.

The CLASS: Pre-K is not developed for, and will not be utilized in, either Early Head Start programs or Home-based programs. When ACF is satisfied with a valid and reliable measure of quality interactions for Early Head Start programs and Home-based programs, a measure will be added as a recompetition condition through a subsequent rulemaking process.

The next two conditions are described in paragraphs (b)(4) and (b)(5), which address the area of licensing and operation by proposing that an agency is required to recompete if it experiences a revocation of its license to operate by a State or local licensing agency; or a suspension of its Head Start grant by ACF.

Section 1307.3(b)(4) considers whether an agency has had its license to operate a center or program revoked by a State or local licensing agency, and the revocation of the license has not been overturned or withdrawn. This is

consistent with the Committee's recommendations to consider revocation of a license to operate a child care program as an automatic indicator requiring competition under the DRS. A license to operate is required in section 641A(a)(1)(D)(i) of the Act, which states that center-based and combination program option facilities "shall meet or exceed State and local requirements concerning licensing for such facilities."

Grantees have appeal rights for license revocations. It is possible that these actions may be overturned. If these actions are overturned, or withdrawn by the responsible State or local agency, before ACF decides to require competition, they will not be used as a basis for a recompetition decision by ACF. The grantee, however, could be required to recompete by ACF based on the existence in its program of any other conditions/criteria listed in section 1307.3. ACF does believe that license revocations, if not overturned or withdrawn, are serious enough to be included as conditions that would require recompetition of a grant. Accordingly, if a challenge to a license revocation is pending at the time of a final decision by ACF on required competition, the grantee would still be required to compete for further funding.

It should be noted that revocation of a license to operate either a child care facility or program, or any other necessary permit, can be grounds for a "deficiency" finding, as the term is defined in section 637(2) of the Act. Failure to correct a deficiency within the allotted time is grounds to terminate an agency from the Head Start or Early Head Start program under section 641A(e)(1)(C) of the Act. An agency that has had its license revoked, but subsequently has it restored during the period for deficiency correction, still would be required to recompete for funding because of the revocation. ACF understands that licensing requirements vary based on State and locality, but agrees with the Committee that licensing standards reflect the standards of care for young children in that community and a sustained license revocation is a serious violation of those standards. ACF is aware of the fact that some grantees, like local government agencies and Indian tribes, are responsible both for administering Head Start programs and enforcing licensing standards applicable to Head Start facilities. We are concerned about the potential conflict of interest that could arise when such agencies are called to apply licensing standards to their own facilities. ACF is seeking comment on this concern and ideas for mitigating risks that may be associated with this condition. ACF also is seeking comment on its impact on large grantees.

Section 1307.3(b)(5) proposes another condition, which was recommended by the Committee: Whether an agency has been suspended from the Head Start or Early Head Start program by ACF. "Suspension of a grant" is defined at 45 CFR 1303.2 as the "temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee." In accordance with 45 CFR 1303.12(a), ACF may suspend a grant "in whole or in part without prior notice and an opportunity to show cause if it is determined that immediate suspension is necessary because of a serious risk of: (1) Substantial injury to property or loss of project funds; or (2) violation of a Federal, State, or local criminal statute; or (3) if staff or participants' health and safety are at risk." A grantee that has been suspended by ACF will be required to compete for further funding unless the suspension has been overturned or withdrawn before the date of ACF's decision about requiring competition under section 1307.7. A grantee that has had its suspension withdrawn or overturned before the ACF decision under section 1307.7 may still be required to compete for further funding based on having met one of the other conditions/criteria in section 1307.3. ACF agrees that any Head Start agency that has been suspended successfully has demonstrated an extremely poor performance and should be required to recompete. A pending challenge to the suspension or restoration of the grantee to the Head Start program after correction of the violation shall not affect application of this requirement. If there is a risk of the loss of Federal funds as a result of mismanagement by a Head Start or Early Head Start agency, ACF will suspend the agency.

The final two conditions are described in paragraphs (b)(6) and (b)(7), which address the area of fiscal and internal controls by proposing that an agency is required to recompete if it is debarred by any Federal or State agency from receiving Federal or State funds or is disqualified from the Child and Adult Care Food Program (CACFP); or is determined to have one or more material weaknesses or to be unable to ensure that it can continue as a going concern.

Section 1307.3(b)(6) proposes as the sixth condition, Head Start agency debarment by a Federal or State agency from receiving Federal or State funds or disqualification from the Child and Adult Care Food Program (CACFP). CACFP disqualification applies to individuals who have been disqualified from participation in the CACFP as principals of institutions, sponsored centers, or as operators of day care homes, as a result of being determined to be responsible for an uncorrected serious deficiency in the operation of an institution, a sponsored center, or a family day care home that participates in the program. This is consistent with the Committee's recommendation that grantees that have been debarred should be considered to be poor performing programs that should have to recompete for their grants. Debarment is grounds for a deficiency finding under section 637(2) of the Head Start Act. Where a deficiency involving debarment exists, the means for correction of the deficiency would be for an agency to obtain a waiver pursuant to 2 CFR 180.135. A former grantee during the period of its debarment would not be eligible for grants and other "Covered Transactions," including grants under the Head Start Act. 2 CFR 180.130(a). An agency that is terminated because it has been debarred will not be in the position to be refunded without undergoing competition because it is no longer participating in the Head Start or Early Head Start program. While we cannot preclude previously debarred grantees after their period of debarment has ended from applying in an open competition, past performance is a criterion for funding under section 641(d)(2)(A) of the Act.

Section 1307.3(b)(7) proposes the final of the seven conditions in paragraph (b), which incorporates two criteria that are consistent with the Committee's recommendations concerning the area of financial management. The Committee proposed that audit findings that determine an agency is unable to ensure it can continue as a going concern and/or that an agency has received a designation of high risk should be used as indicators of program performance determination criteria for recompetition. ACF believes that an agency that is determined to have one or more material weaknesses or to be unable to ensure that it can continue as a going concern is a high-risk agency that has demonstrated poor financial performance that should result in the grantee being required to recompete for renewal. We propose to use the definitions described in section 1307.2 for "material weakness" and "going concern." Section 1307.3(b)(7) provides that the basis for the two criteria in this condition will be findings and opinions of either an audit conducted in accordance with section 647 of the Act; an audit, review or

investigation by a State agency; a review by the National External Audit Review (NEAR) Center; or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General as mandated under Public Law 95–452. We considered including as another criterion in the area of financial management whether the grantee had a disallowance of any of its Head Start or Early Head Start funds. As defined in the HHS Uniform Administrative Requirements implemented at 45 CFR 74.2, "disallowed costs" means "those charges to an award that the HHS awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award." However, we recognize that an instance of disallowed costs would lead to a deficiency finding by ACF in most cases and therefore did not include this as one of the criteria for recompetition.

In our development of this proposed rule, we also considered incorporating into the DRS two other conditions: The results of Head Start agencies' Program Information Reports (PIR) and agency bankruptcy. However, based on the rationales described below, we decided that the PIR should be used only in a limited way and bankruptcy should not be included as a DRS condition.

The PIR is a survey tool used by ACF to collect self-reported information about Head Start and Early Head Start services received by children and families enrolled in Head Start programs. ACF uses the information collected through the PIR to inform the public and Congress about the status of children in Head Start programs as required by the Act. We recognize that Congress included the PIR as a source of information for the DRS in the 2007 reauthorization of the Head Start Act. Specifically, section 641(c)(1)(E) of the Act requires that Program Information Reports (PIR) be only one of the sources of information that the DRS will use to make its determination of whether the grantee meets the program and financial management requirements and standards described in section 641A(a)(1) of the Act. However, the Committee stated in its report that the PIR has "significant limitations," and noted in particular "documented reliability problems." In addition, a number of public comments were received by the Committee arguing against use of PIR data as part of the DRS due to reliability concerns. We note that in carrying out ongoing Federal oversight of programs, and as preparation for conducting triennial reviews, Federal staff already review the PIR data of specific programs and look for "red flags" that warrant follow-up attention. Therefore, ACF proposes to continue to utilize PIR data when gathering background information about programs, including when performing DRS reviews, with due regard to its limitations.

Similarly, we considered incorporating bankruptcy as another condition under the DRS, but instead we propose to regard bankruptcy as a "red flag" that should result in further inquiry. We note that the Committee recommended that bankruptcy be included in the automatic conditions for recompetition by stating that it is "indicative of instability in the program." While we agree that this is a very serious situation that raises the question of whether a grantee is in sound enough fiscal condition to continue to be funded to operate a Head Start program, we believe that it is possible that, in some cases, a grantee could file for bankruptcy or agree to a reorganization plan as part of a bankruptcy settlement, but could continue to be able to function as a Head Start program if it still has its Head Start funding intact. In addition, we believe that the two financial conditions we propose to establish in section 1307.3(b)(7) are sufficient to satisfy the Committee's recommendations concerning financial management.

Section 1307.4—Grantee Reporting Requirements Concerning Certain Conditions

Section 1307.4 proposes reporting requirements concerning the occurrence of certain conditions related to requirements for grant recompetition under section 1307.3. Under proposed paragraph (a), Head Start and Early Head Start agencies are required to report in writing to ACF within ten working days of occurrence of any of the following events: (1) The agency has had a license to operate a center revoked by a State or local licensing entity; (2) the agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement; (3) the agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from The Child and Adult Care Food Program (CACFP); or (4) the agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency has one or more material weaknesses or is at risk for ceasing to function as a going concern.

Currently Head Start and Early Head Start agencies are not required to report these occurrences. ACF believes that timely reporting of the occurrences is warranted because of their potential seriousness and that ten days is a reasonable amount of time for the agency to report the occurrence to ACF. Failure to comply with the reporting requirement may result in additional monitoring of the grantee in order to determine whether or not there is basis for ACF to issue a finding of non-compliance or deficiency. While we considered making the failure to report any of these occurrences another condition that would require recompetition automatically, we recognized that the majority of grantees will comply with these reporting requirements. We also would not want to force a grantee to recompete based on an honest mistake whereby it missed the 10-day reporting deadline or an extenuating circumstance whereby it was unable to comply with the deadline. However, if we learn through the Head Start monitoring process, or other measures, that a grantee deliberately neglected to report any of these occurrences, then ACF will issue a deficiency finding and the grantee would be required to compete based on the condition described in section 1307.3(b)(1).

Section 1307.5—Requirements To Be Considered for Designation for a Five-Year Period When No Entity in a Community Is Determined To Be Delivering a High-Quality and Comprehensive Head Start Program

Section 641(d) of the Act requires that "if no entity in a community is determined to be successfully delivering a high-quality and comprehensive Head Start program * * * the Secretary shall, after conducting an open competition, designate for a five-year period a Head Start agency from among qualified applicants in such community." If a grantee is found to meet any of the conditions/criteria in section 1307.3, its service area will be subject to an open competition to determine if it or another provider is best able to serve children and families in that community. Section 641(h) of the Act explains that "for purposes of this subchapter, a community may be a city, county, or multicity or multicounty unit within a State, an Indian reservation (including Indians in any off-reservation area designated by an appropriate tribal government in consultation with the Secretary), or a neighborhood or other area (irrespective of boundaries or

political subdivisions) that provides a suitable organizational base and possesses the commonality of interest needed to operate a Head Start program."

Section 1307.5 proposes requirements for how to compete for the opportunity to be awarded a five-year grant if no entity in a community is determined to be successfully delivering a high-quality and comprehensive Head Start program. We are proposing that any agency that has had its Head Start or Early Head Start grant terminated in the preceding five years will be excluded from participating in such a competition for a period of five years due to the extremely serious nature of uncorrected deficiencies that would have led to such a termination. ACF believes that because of their poor performance such organizations cannot be considered to be 'qualified applicants' in a community under section 641(d)(1) of the Head Start Act.

Under this section, we propose that in order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the designated ACF official that demonstrates it will deliver a high-quality and comprehensive program. The application must address the criteria for selection listed at section 641(d)(2) of the Act.

Section 641(d)(2) of the Act provides the factors ACF will consider in selecting a grantee, including the applicant's past performance and plans to provide comprehensive services, attract and retain qualified staff, maintain strong fiscal controls and cost effective fiscal management, maintain child to teacher ratios, meet the program performance standards, coordinate and collaborate with other early childhood education and development entities, and facilitate parent involvement in their program.

In cases in which a new grantee is selected as a result of recompetition, ACF believes that the transition generally will proceed without any disruption of services to children and families in the community served. If ACF determines that a particular transition poses a risk of disruption of services, ACF may exercise its statutory authority to utilize the replacement process in exceptional circumstances.

Section 1307.6—Tribal Government Consultation Under the Designation Renewal System for When an Indian Head Start Grant Is Being Considered for Competition

This section proposes a process for Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition. American Indian and Alaska Native Head Start programs provide Head Start services to Tribes, bands, pueblos, or other organized groups or communities, including native villages, recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Section 641(c)(7)(B) of the Act prescribes a specific timeframe and process for implementing the DRS for Indian Head Start agencies, which differs from the DRS for other Head Start agencies. For instances in which an Indian Head Start agency is determined to not be delivering a high-quality and comprehensive Head Start program, the Act requires the Secretary of HHS to engage in government-to-government consultation with the appropriate Tribal government or governments in order to establish a plan to improve the quality of Head Start programs operated by the Indian Head Start agency. The Act requires that the Secretary of HHS reevaluate the performance of the Indian Head Start agency no more than six months after the implementation of the plan. If the Indian Head Start agency still is not delivering a high-quality and comprehensive Head Start program, the Secretary shall conduct an open competition.

This section proposes the same process that is required by section 641(c)(7)(B) of the Act. Under paragraph (a), when making a designation renewal determination, the designated ACF official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of Head Start programs operated by the Indian Head Start agency.

The plan will be established and implemented within six months after the designated ACF official's determination. Not more than six months after the implementation of that plan, the designated ACF official will reevaluate the performance of the Indian Head Start agency and will conduct an open competition following a determination that the Indian Head Start agency still is not delivering a high-quality and comprehensive Head Start program.

Per section 641(e) of the Act, a non-Indian Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless no Indian Head Start agency in the community is available for designation to carry out an Indian Head Start program. In such a circumstance, a non-Indian Head Start agency may receive a grant to carry out an Indian Head Start program, but only until such time as an Indian Head Start agency in such community becomes available and is designated pursuant to section 641 of the Act.

Accordingly, under proposed paragraph (b), a non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program.

Under proposed paragraph (c), a non-Indian Head Start or Early Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated.

Section 1307.7—Designation Request and Review Process

As discussed earlier in this preamble, following publication of the final rule, ACF will implement the DRS and, consistent with section 641(c)(9) of the Act, will transition the current continuous grants into five-year grants over a three-year period. One-third of grantees will be reviewed in each of three years to determine if they meet any of the conditions/criteria set out in section 1307.3 that would require recompetition or if they will receive the first five-year grant non-competitively. The designation review will be scheduled to occur during the year following the year that the grantee has its triennial review.

ACF's designation review will examine relevant records about the grantee's performance since June 12, 2009, and no data prior to June 12, 2009 will be considered in order to comply with section 641(c)(9)(B) of the Act, which describes the following limitation for the transition to the DRS: "A Head Start agency shall not be subject to the requirements of the system for designation renewal prior to 18 months after the date of enactment of the Improving Head Start for School Readiness Act of 2007." As discussed previously, there is one exception to this time period. ACF proposes an alternative relevant time period to be considered for the third condition described in section 1307.3(b)(3), which considers the results of the classroom interaction rating system known as "CLASS: Pre-K." ACF proposes to delay implementing the consideration of results from CLASS: Pre-K until after

the effective date of the regulation and beginning in the third year of the three-year transition period because the use of CLASS still is relatively new to many Head Start agencies. Therefore, results from CLASS: Pre-K will not be considered starting on June 12, 2009 and instead will be considered starting after the effective date of this Part and beginning in the third year of the three-year transition period.

Paragraph (a) proposes that agencies wishing to be renewed without competition must request that status. Under paragraph (b)(1), in the three years after the effective date of the final rule, during the year after review of a Head Start or Early Head Start agency under section 641(c)(1)(A) of the Act, each agency that has requested non-competitive renewal would be reviewed to determine whether the conditions/criteria in proposed section 1307.3 are met, using information on the agency's performance since June 12, 2009.

As provided under paragraph (b)(2), ACF proposes to provide preliminary notice to each grantee of the results of the designation review at least twelve months before expiration of their current grant. Such notices will be in writing by registered mail return receipt requested providing preliminary notice under paragraph (b)(2)(i), that the agency will be required to compete for funding for an additional five-year period based on a determination that one or more conditions/criteria in proposed section 1307.3 are met, or under (b)(2)(ii), that the agency has been determined on a preliminary basis to be eligible for renewed funding under section 1307.3.

ACF proposes to provide final notice to the grantee of the designation decision at least six months before expiration of their current grant. A grantee determined to be delivering a high-quality and comprehensive Head Start or Early Head Start program, as established by the fact that none of the conditions/criteria in proposed section 1307.3 are met for its program, will be awarded a five-year grant non-competitively. A grantee determined to be not delivering a high-quality and comprehensive Head Start or Early Head Start program, as established by the fact that one or more of the conditions/criteria in proposed section 1307.3 are met, will be subject to open competition for the opportunity to be awarded a five-year grant. Proposed paragraph (b)(3) provides that at least six months before the expiration of the grant of an agency, written notice by certified mail return receipt requested will be sent of the final finding that the agency is eligible for renewed funding without competition, or that the agency will be required to recompete for funding for an additional five-year period based on a determination under section 1307.3. ACF invites grantees to comment on the proposed transition plans.

Following the transition period, all existing grantees will be subject to a five-year grant period. As provided in paragraph (c)(1), during the fourth year of the grant period, ACF will review all relevant data about a grantee's performance and make a determination, based on the conditions/criteria established in section 1307.3, of whether the grantee is providing high-quality, comprehensive services. Grantees for which none of the conditions/criteria in proposed section 1307.3 are met will not be required to recompete under proposed section 1307.3 and will be awarded another five-year grant. Grantees for which one or more of the conditions/criteria in proposed section 1307.3 are met will be required to compete.

Following the approach proposed for the transition period under paragraph (a) and (b), ACF proposes under paragraph (c)(2) to provide preliminary notice to the grantee of the results of the designation review at least twelve months before expiration of their current five-year grant, subject to revision based on developments that take place within the ensuing six-month period.

Under paragraph (c)(3), ACF proposes to provide final notice to the grantee of the designation decision at least six months before expiration of their current five-year grant. Grantees determined to be delivering a high-quality and comprehensive program, evidenced by not meeting any of the conditions/criteria, will be awarded a five-year grant non-competitively. For grantees determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, ACF proposes to provide final notice to the grantee at least six months before expiration of their current five-year grant that they will have to compete for the opportunity to be awarded a five-year grant.

Section 1307.8—Use of CLASS: Pre-K Instrument in the Designation Review System

ACF is proposing in section 1307.8 that, except when all children are served in a single classroom, ACF will conduct multiple class observations and rate the conduct of the classes observed using the Classroom Assessment Scoring System: Pre-K (CLASS: Pre-K) instrument. When the grantee serves the children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that single class will be the domain scores for the grantee for that observation. For grantees that serve children in multiple classrooms, ACF will conduct CLASS: Pre-K observations on a subset of the classrooms. After the CLASS: Pre-K observation is completed, ACF will report to the grantee the scores of the classes observed during the observation in each of the domains covered by the CLASS: Pre-K instrument. ACF will average the scores in each of the domains for all classrooms assessed during a CLASS: Pre-K observation to determine the grantee's score in each domain. As provided in section 1307.3(b)(3), an agency that has been determined by ACF to have a score of one, on one or more domains during the transition period or a score below three, on one or more domains, for the period after the close of the transition period on each of the two most recent CLASS: Pre-K observations in the time period covered by an ACF decision under section 1307.7 will be required to compete for designation renewal. As provided under section 1307.3(b)(3), the CLASS: Pre-K condition will apply to CLASS: Pre-K observations in DRS reviews under section 1307.7(c) that take place after the effective date of this Part and during the third year of the transition period. As discussed earlier in the preamble, ACF is considering alternatives for calculating CLASS: Pre-K scores to determine the need to recompete and we welcome comments on those alternatives.

IV. Paperwork Reduction Act

This rule establishes new information collection requirements in section 1307.4. As required by the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507, ACF will submit a copy of these sections to the Office of Management and Budget (OMB) for review and they will not be effective until they have been approved and assigned a clearance number.

Requirement	Respondents	Annual	Average burden per respondent (hours)	Total burden hours
Per section 1307.4, Head Start and Early Head Start agencies must report to ACF within ten working days of occurrence of any of the following: (1) The agency has had a license to operate a center revoked by a State or local licensing entity. (2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement. (3) The agency has been debarred from receiving Federal or State funds from any Federal or State agency or has been disqualified from the Child and Adult Care Food Program (CACFP). (4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit agency containing a determination that the agency: Has one or more material weaknesses; or is at risk of failing to function as a going concern.	12–22 grantees	1 hour or less	1 hour or less	12–22 hours.
Per section 1307.7(a), each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF immediately after its review under section 641A(c)(1)(A).	1,600 grantees	1 hour or less	1 hour or less	1,600 hours.

We estimate the costs of implementing these requirements will be approximately $20,000 annually.

We do not anticipate that Head Start agencies would be gathering new information to accomplish these changes. They only will be required to inform ACF that the event has occurred or that they wish to have their designation renewed.

With respect to these provisions, ACF will consider comment by the public on this proposed collection of information in the following areas:

- Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the proposed collection of information, including the validity of the methodology and the assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by e-mail to *OIRA at submission@omb.eop.gov.* Please mark faxes and e-mails to the attention of the desk officer for ACF.

V. Regulatory Flexibility Act

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this rule will not result in a significant economic impact on a substantial number of small entities. The actions required of grantees to comply with the reporting, recordkeeping, and other requirements of this rule do not require significant expenditures of funds.

Specifically, as noted under the Paperwork Reduction Act section of this preamble, we estimate the cost of implementing new reporting requirements to be approximately $20,000 annually, which when applied to all 1,600 grantees nationally, results in a cost per grantee of less than $20. In addition, only a subset of the 1,600 grantees will be required to compete for renewal of a grant under these regulations. At least 25 percent of grantees reviewed in a year will be affected by the regulation. Those grantees that need to compete for another five-year grant are required to submit an application. Since all grantees currently are required to submit a refunding application each year for their noncompetitive grant, there only will be an incremental increase in costs for grantees that must prepare and submit a competitive application. We estimate those costs to be less than $1,500 for each grantee submitting a competitive application. In developing this estimate, we assumed that the primary cost factor relates to hourly salaries of the staff that likely would be involved in a refunding application. Further, we assumed that grantees could spend up to twice as much time preparing this competitive application as they do on their regular annual refunding application.

These rules primarily are intended to ensure accountability for Federal funds consistent with the purposes of the Head Start Act and are not duplicative of other requirements. In developing this notice of proposed rulemaking, we sought to implement the new and expanded requirements of the Head Start Act in a manner that does not impinge on a small entity's ability to design and manage effective and responsive Head Start programs. At the same time, we sought to focus renewed attention on strengthening accountability for Head Start programs and increasing quality outcomes for low-income families. We believe this rule implements the aims of the Head Start Act, as amended, to improve the effectiveness of Head Start programs while preserving Head Start grantees' abilities to continue using creativity and innovation to promote the school readiness of low-income children. We request public comments on whether we have adequately considered all costs for small entities and achieved the balance described above.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this notice of proposed rulemaking is consistent with these priorities and principles. These regulations primarily implement statutory changes to the Head Start program enacted in the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110–134). We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were subject to OMB's review.

ACF does not believe there will be a significant economic impact from this regulatory action. At least 25 percent of grantees reviewed in a year will be affected by the regulation. Combining the costs of implementation of these rules for all grantees (approximately $20,000 annually) and the costs to those subset of grantees that would be required to compete in any year (estimated to be no more than $1,500 for each grantee), the total cost per year resulting from this regulation is well under $1 million.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that this rule, in implementing the new statutory requirements, would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. This rule will not have substantial direct impact on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

X. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, ACF has concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 45 CFR Part 1307

Education of disadvantaged, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program Number 93.600, Head Start)

Dated: June 14, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

Approved: June 14, 2010.

Kathleen Sebelius,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR Chapter XIII by adding part 1307 to read as set forth below:

PART 1307—POLICIES AND PROCEDURES FOR DESIGNATION RENEWAL OF HEAD START AND EARLY HEAD START GRANTEES

Sec.

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

§ 1307.1 Purpose and scope.

The purpose of this part is to set forth policies and procedures for the designation renewal of Head Start and Early Head Start programs. It is intended that these programs be administered effectively and responsibly; that applicants to administer programs receive fair and equitable consideration; and that the legal rights of current Head Start and Early Head Start grantees be fully protected. The designation renewal system is established in this part to determine if Head Start and Early Head Start agencies meet the educational, health, nutritional, and social needs of the children and families they serve and qualify to be designated for funding for five years without competing for such funding as required under section 641(c) of the Head Start Act with respect to Head Start agencies and pursuant to section 645A(b)(12) with respect to Early Head Start agencies. A competition to select a new Head Start or Early Head Start to replace a Head Start or Early Head Start agency that has been terminated voluntarily or involuntarily is not part of the designation renewal system established in this part, and is subject instead to the requirements of part 1302.

§ 1307.2 Definitions.

As used in this part—

ACF means the Administration for Children and Families in the Department of Health and Human Services.

Act means the Head Start Act, 45 U.S.C. 9831 *et seq.*

Agency means a public or private non-profit or for-profit entity designated by ACF to operate a Head Start or Early Head Start program.

Designated ACF official means the Official authorized under Department of Health and Human Services delegations authority to perform actions required or authorized by statute, regulation, delegation, or order of a superior official.

Early Head Start Agency means a public or private non-profit or for-profit entity designated by ACF to operate an Early Head Start program to serve pregnant women and children from birth to age three, pursuant to section 645A(e) of the Head Start Act.

Going concern means an organization that operates without the threat of liquidation for the foreseeable future, a period of at least 12 months.

Head Start Agency means a local public or private non-profit or for-profit entity designated by ACF to operate a Head Start program to serve children age three to compulsory school age, pursuant to section 641(b) and (d) of the Head Start Act.

Material weakness means a weakness, or a combination of weaknesses, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the grantee's annual or interim financial statements will not be prevented or detected on a timely basis.

Transition period means the three-year time period after the effective date of the final rule on the Designation Renewal System during which ACF will convert all of the current continuous Head Start and Early Head Start grants into five-year grants after reviewing each grantee to determine if it meets any of the conditions or criteria under § 1307.3 that would require recompetition or if the grantee will receive its first five-year grant non-competitively.

§ 1307.3 Basis for determining whether a Head Start agency will be subject to an open competition.

(a) A minimum of 25 percent of all Head Start grantees (including both Head Start and Early Head Start grantees) reviewed in the same year will be required to compete for their next five years of funding.

(b) A Head Start or Early Head Start agency shall be required to compete for its next five years of funding whenever the designated ACF official determines that one or more of the following seven conditions existed during the relevant time periods described under § 1307.7:

(1) An agency has been determined by ACF to have one or more deficiencies on a single review conducted under section 641A(c)(1)(A), (C), or (D) of the Act in the period covered by an ACF review under § 1307.7.

(2) An agency has been determined by the designated ACF official based on a review conducted under section 641A(c)(1)(A), (C), or (D) of the Act during the period covered by the ACF review under § 1307.7:

(i) In the period beginning on June 12, 2009, not to have established and taken steps to achieve its goals for improving the school-readiness of children participating in their program in accordance with the requirements of section 641A(g)(2) of the Act; and

(ii) Beginning with the effective date of the part, not to have analyzed individual child-level assessment data in order to determine each child's status with regard to each of the domains of the Head Start Child Outcomes Framework for Head Start programs and the Child Competencies listed in the Early Head Start Program Performance Measures Framework for Early Head Start programs and to plan how to individualize experiences and instructional approaches to best support each child's progress; and not to have analyzed aggregated child assessment data at least three times per year, except for programs operating less than 90 days, which will be required to do so at least two times within their program period, and program data to support continuous improvement and inform professional development, staffing, and other program decisions.

(3) An agency has been determined by the designated ACF official during the period covered by an ACF review under § 1307.7:

(i) In the period after the effective date of part 1307, and for the findings identified in a DRS review under part 1307 conducted during the third year of the three-year transition period, but before the close of the three-year transition period, to have a score of one, on one or more domains on CLASS: Pre-K, on the two most recent CLASS: Pre-K observations; and

(ii) In the period after the effective date of part 1307, and for the findings identified in a DRS review under part 1307 conducted after the close of the three-year transition period, to have a score that is below three, on one or more domains of the CLASS: Pre-K on the two most recent CLASS: Pre-K observations.

(4) An agency has had its license to operate a Head Start or Early Head Start center or program revoked by a State or local licensing agency in the period covered by an ACF review under § 1307.7, and the revocation has not been overturned or withdrawn during that period. A pending challenge to the license revocation or restoration of the license after correction of the violation shall not affect application of this requirement.

(5) An agency has been suspended from the Head Start or Early Head Start program by ACF during the period covered by the designated ACF official review under § 1307.7 and the suspension has not been overturned or withdrawn before a competition for funding for the next five-year period is announced. A pending challenge to suspension or restoration of the grantee to the Head Start program after correction of the violation shall not affect application of this requirement.

(6) An agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from The Child and Adult Care Food Program (CACFP) any time during the period covered by the designated ACF official's review under § 1307.7 but has not yet been terminated or denied refunding by ACF. (A debarred agency will only be eligible to compete for Head Start funding if it receives a waiver described in 2 CFR 180.135.)

(7) An agency has been determined by ACF within the twelve months preceding the designated ACF official's review under § 1307.7 to have either one or more material weaknesses or to be at risk for failing to continue functioning as a going concern. The final determination is made by the designated ACF official based on a review of the findings and opinions of an audit conducted in accordance with section 647 of the Act; an audit, review or investigation by a State agency; a review by the National External Audit Review (NEAR) Center, or an audit, investigation or inspection by the Department of Health and Human Services Office of Inspector General.

(c) If a minimum of 25 percent of all Head Start grantees (including both Head Start and Early Head Start grantees) reviewed in the same year are not required to compete for their next five years of funding based on the conditions described in paragraphs (b)(1) through (7) of this section, then additional grantees up to that threshold, identified by the Secretary through established criteria, will be required to compete, pursuant to paragraph (a) of this section.

§ 1307.4 Grantee reporting requirements concerning certain conditions.

(a) Head Start agencies must report in writing to the designated ACF official within ten working days of occurrence any of the following events:

(1) The agency has had a license to operate a center revoked by a State or local licensing entity.

(2) The agency has filed for bankruptcy or agreed to a reorganization plan as part of a bankruptcy settlement.

(3) The agency has been debarred from receiving Federal or State funds from any Federal or State department or agency or has been disqualified from The Child and Adult Care Food Program (CACFP).

(4) The agency has received an audit, audit review, investigation or inspection report from the agency's auditor, a State agency, or the cognizant Federal audit

agency containing a determination that the agency has one or more material weaknesses or is at risk for ceasing to be a going concern.

§ 1307.5 Requirements to be considered for designation for a five-year period when no entity in a community is determined to be delivering a high-quality and comprehensive Head Start program.

In order to compete for the opportunity to be awarded a five-year grant, an agency must submit an application to the designated ACF official that demonstrates it will deliver a high-quality and comprehensive Head Start program. The application must address the criteria for selection listed at section 641(d)(2) of the Act. Any agency that has been terminated as a Head Start or Early Head Start agency in the preceding five years will be excluded from competing in such competition.

§ 1307.6 Tribal government consultation under the Designation Renewal System for when an Indian Head Start grant is being considered for competition.

(a) In the case of an Indian Head Start or Early Head Start agency determined not to be delivering a high-quality and comprehensive Head Start or Early Head Start program, the designated ACF official will engage in government-to-government consultation with the appropriate Tribal government or governments for the purpose of establishing a plan to improve the quality of the Head Start program or Early Head Start program operated by the Indian Head Start or Indian Early Head Start agency.

(1) The plan will be established and implemented within six months after the designated ACF official's determination.

(2) Not more than six months after the implementation of that plan, the designated ACF official will reevaluate the performance of the Indian Head Start or Early Head Start agency.

(3) If the Indian Head Start or Early Head Start agency is still not delivering a high-quality and comprehensive Head Start or Early Head Start program, the designated ACF official will conduct an open competition to select a grantee to provide services for the community currently being served by the Indian Head Start or Early Head Start agency.

(b) A non-Indian Head Start or Early Head Start agency will not be eligible to receive a grant to carry out an Indian Head Start program, unless there is no Indian Head Start or Early Head Start agency available for designation to carry out an Indian Head Start or Indian Early Head Start program.

(c) A non-Indian Head Start or Early Head Start agency may receive a grant to carry out an Indian Head Start program only until such time as an Indian Head Start or Indian Early Head Start agency in such community becomes available and is designated pursuant to this part.

§ 1307.7 Designation request and review process.

(a) In the three years after the effective date of this part, during the year after the review of a Head Start or Early Head Start agency under section 641A(c)(1)(A) of the Act, each Head Start or Early Head Start agency wishing to be renewed for five years without competition shall request that status from ACF immediately after its review under section 641A(c)(1)(A).

(b)(1) ACF shall review each Head Start and Early Head Start agency which has made a request under paragraph (a) of this section to determine if any of the conditions listed in § 1307.3(b)(1), (b)(2), or (b)(4) through (7) or the criteria under § 1307.3(c) were met by the agency's program since June 12, 2009 or if the condition listed in § 1307.3(b)(3) existed in the agency's program since the effective date of this part and beginning in the third year of the three-year transition period.

(2) Except as provided in § 1307.6, at least twelve months before the expiration date of a Head Start or Early Head Start agency's then current grant, ACF shall give written notice by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions listed in § 1307.3(b)(1), (b)(2), or (b)(4) through (7) or the criteria under § 1307.3(c) were met by the agency's program after June 12, 2009 or if the condition listed in § 1307.3(b)(3) existed in the agency's program since the effective date of this part and beginning in the third year of the three-year transition period; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF did not find that any conditions listed in § 1307.3(b)(1), (b)(2), or (b)(4) through (7) or the criteria under § 1307.3(c) were met by the agency's program after June 12, 2009 or the condition listed in § 1307.3(b)(3) existed in the agency's program since the effective date of this part and beginning in the third year of the three-year transition period.

(3) Except as provided in § 1307.6, at least six months before the expiration date of a Head Start or Early Head Start agency's then-current grant, ACF shall give written notice by certified mail return receipt requested or other system that establishes the date of receipt of the notice by the addressee, stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions or criteria listed in § 1307.3 were met by the agency's program during the relevant time periods described in § 1307.7(b), identifying the conditions or criteria ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a final basis to be eligible for renewed funding for five years without competition because ACF did not find that any conditions or criteria listed in § 1307.3 were met by the agency's program during the relevant time periods described in § 1307.7(b). The letter will include instructions on the information it must provide to the designated ACF official in order to receive funding.

(c)(1) Beginning with the five-year grant period after the transition period under paragraph (b) of this section, at the beginning of the fourth year of a Head Start or Early Head Start agency's then current grant, an agency wishing to be renewed without competition shall request that status. ACF shall review the applicant Head Start and Early Head Start agency to determine if any of the conditions or criteria listed in § 1307.3 were met by the agency's program:

(i) Since the most recent ACF review of the agency under this part, or,

(ii) After the effective date of this part, in the case of the condition described under § 1307.3(b)(3).

(2) Except as provided in § 1307.6, at least twelve months before the expiration date of a Head Start or Early Head Start agency's grant, ACF shall give written notice by certified mail return receipt requested, or other system that establishes the date of receipt of the notice by the addressee, stating either:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions or criteria listed in § 1307.3 were met by the agency's program during the period established in paragraphs (c)(1)(i) or (ii) of this section, identifying the conditions or criteria ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a preliminary basis to be eligible for renewed funding for five years without competition because ACF

did not find that any conditions or criteria listed in § 1307.3 were met by the agency's program in the period established in paragraphs (c)(1)(i) or (ii) of this section.

(3) Except as provided in § 1307.6, at least six months before the expiration date of a Head Start or Early Head Start agency's then current grant, ACF shall give written notice by certified mail return receipt requested, or other system that establishes the date of receipt of the notice by the addressee, either stating:

(i) The Head Start or Early Head Start agency will be required to compete for funding for an additional five-year period because ACF finds that one or more conditions or criteria listed in § 1307.3 were met by the agency's program during the period established under paragraphs (c)(1)(i) or (ii) of this section identifying the conditions or criteria ACF found, and summarizing the basis for the finding; or

(ii) That such agency has been determined on a final basis to be eligible for renewed funding for five years without competition because ACF did not find that any conditions or criteria listed in § 1307.3 existed in the agency's program during the period established under paragraphs (c)(1)(i) or (ii) of this section. The letter will include instructions on the information it must provide to the designated ACF official in order to receive funding.

§ 1307.8 Use of CLASS: Pre-K Instrument in the Designation Review System.

Except when all children are served in a single classroom, ACF will conduct multiple class observations and rate the conduct of the classes observed using the CLASS: Pre-K instrument. When the grantee serves the children in its program in a single class, that class will be observed and rated using the CLASS: Pre-K instrument. The domain scores for that class will be the domain scores for the grantee for that observation. After the observation is completed, ACF will report to the grantee the scores of the classes observed during the CLASS: Pre-K observation in each of the domains covered by the CLASS: Pre-K instrument. ACF will average the scores on each domain for all classrooms assessed during a CLASS: Pre-K observation to determine the grantee's score in each domain. As provided in § 1307.3(b)(3), an agency that has been determined by ACF to have a score of one, on one or more domains, during the transition period or a score below three, on one or more domains, for the period after the close of the transition period on each of the two most recent CLASS: Pre-K observations in the time period covered by an ACF decision under § 1307.7 will be required to compete for designation renewal. As provided under § 1307.3(b)(3), the CLASS: Pre-K condition will apply to CLASS: Pre-K observations in DRS reviews under § 1307.7(c) that take place after the effective date of this part and during the third-year of the transition period.

[FR Doc. 2010–23583 Filed 9–21–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 2009–034; Docket 2010–0098; Sequence 1]

RIN: 9000–AL73

Federal Acquisition Regulation; TINA Interest Calculations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the clauses at FAR 52.214–27, 52.215–10 and 52.215–11 to require compound interest calculations be applied to Government overpayments as a result of defective cost or pricing data.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 22, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR Case 2009–034 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–034" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–034". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–034" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW., Room 4041, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2009–034, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2009–034.

SUPPLEMENTARY INFORMATION:

A. Background

On September 14, 2009, the U.S. Court of Appeals for the Federal Circuit (CAFC) issued a decision regarding the method of interest calculation on Cost Accounting Standards (CAS) cost impacts (*See GATES* v. *Raytheon Co.,* 584 F.3d 1062 (Fed. Cir. 2009)). The interest on CAS cost impacts is set by reference in the enabling statute to 26 U.S.C. 6621. The CAFC ruled that the citation led to calculation of the interest using daily compounding. The Truth in Negotiation Act (TINA) also references 26 U.S.C. 6621 for interest calculation. This proposed rule replaces the term "simple interest" as the requirement for calculating interest for TINA cost impacts with the phrase "Interest compounded daily as required by 26 U.S.C. 6622." Thus, compound interest calculations will be applied to Government overpayments as a result of defective cost or pricing data.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule merely clarifies the statutory method for calculating interest in the rare instances when a contractor is found to be in violation of TINA. Since TINA requirements generally do not apply to contracts with small entities,